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**TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE
NEGOTIATIONS**

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Trade Agreements Resulting From the...

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS

AND ITS

SUBCOMMITTEE ON TRADE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JANUARY 26, FEBRUARY 1, 2, 8, AND 22, 1994

Serial 103-73

Printed for the use of the Committee on Ways and Means



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TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, JANUARY 26, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, D.C.

The committee met, pursuant to call, at 12:15 p.m., in room 1100, Longworth House Office Building, Hon. Dan Rostenkowski (chairman of the committee) presiding.

[The press releases announcing the hearings follow:]

FOR IMMEDIATE RELEASE
THURSDAY, JANUARY 6, 1994

PRESS RELEASE #19
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES PUBLIC HEARINGS ON
THE TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

The Honorable Dan Rostenkowski (D., Ill.), Chairman of the Committee on Ways and Means, U.S. House of Representatives, today announced hearings on the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). The hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, on Wednesday, January 26, 1994, beginning at 10:00 a.m.

The full Committee will receive testimony from the U.S. Trade Representative, Ambassador Michael Kantor, on the provisions and economic implications of the agreements and on their proposed implementation in U.S. law. Additional hearings will be conducted by the Subcommittee on Trade to receive testimony from public witnesses.

Public Law 103-49, enacted on July 2, 1993, extended fast-track authority under the Omnibus Trade and Competitiveness Act of 1988 for the President to enter into trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the GATT. This extended fast-track authority required the President to notify the Congress at least 120 days in advance of his intention to enter into such trade agreements. The President provided such notice to the Congress on December 15, 1993. The President may not enter into the agreements until April 15, 1994. If the agreements are signed on that date, they will subsequently be submitted, together with implementing legislation and statement of administrative action, for Congressional approval. Under "fast track" procedures, the Congress has a maximum of 90 legislative days (60 legislative days in the House) to consider implementing legislation after it is submitted by the President. Such legislation, which is unamendable after it is submitted, would approve the agreements and make such changes in U.S. law as are necessary or appropriate to implement the agreements.

The purpose of these hearings is to provide guidance to the Committee on whether the agreements are in the U.S. economic interest and on issues that should be addressed in the implementing bill and statement of administrative action. Although the bill and statement of administrative action will be formally submitted by the Administration, they are developed in close consultation with the Congress.

* * * * *

*** NOTICE--CHANGE IN TIME ***

FOR IMMEDIATE RELEASE
TUESDAY, JANUARY 25, 1994

PRESS RELEASE #19-REVISED
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN,
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A CHANGE IN TIME FOR THE HEARING ON
THE TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, announced today that the hearing on the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), scheduled for Wednesday, January 26, 1994, beginning at 10:00 a.m. in the main Committee hearing room, 1100 Longworth House Office Building, will begin instead at 12:00 p.m.

All other details for the hearing remain the same. (See press release #19, dated January 6, 1994.)

FOR IMMEDIATE RELEASE
THURSDAY, JANUARY 6, 1994

SUBCOMMITTEE ON TRADE #22
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN,
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES CONTINUATION OF HEARINGS
ON THE TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will continue the hearings on the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) announced by the full Committee on Ways and Means (press release #19). The full Committee will receive testimony from the U.S. Trade Representative, Ambassador Michael Kantor, on behalf of the Administration, on Wednesday, January 26, 1994.

The Subcommittee will receive testimony from the public on the Uruguay Round trade agreements and their implementation. In particular, the Subcommittee is interested in receiving views from the public on the likely impact of the agreements on the U.S. economy overall and on particular agricultural, industrial, and service sectors; on the provisions and implications of individual agreements for the U.S. economy and domestic laws; on the completion of market-access negotiations; and on how issues unresolved in the Round should be dealt with in the future. The Subcommittee is also very interested in proposals by the public on provisions necessary or appropriate for inclusion in the Uruguay Round implementing legislation or accompanying statement of administrative action.

The date, time, and location for the Subcommittee hearings will be announced in a subsequent press release. The Members of the full Committee on Ways and Means are also invited to participate in the Subcommittee hearings.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler, Diane Kirkland, or Karen Ponzurick [telephone (202) 225-1721] by close of business Monday, January 24, 1994. The telephone request should be followed by a formal written request to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

(MORE)

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WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file a written statement for inclusion in the printed record of the hearing. Persons submitting written statements for the printed record should submit at least six (6) copies of their comments to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The closing date for submission of written comments will be announced at the time the hearing is scheduled. If those filing written statements for the printed record of the hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * * *

FOR IMMEDIATE RELEASE
TUESDAY, JANUARY 25, 1994

SUBCOMMITTEE ON TRADE #24
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3625

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN,
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES
DATES FOR CONTINUATION OF HEARINGS ON
THE TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the hearings scheduled to begin on Wednesday, January 26, 1994, by the full Committee on Ways and Means on the trade agreements resulting from the Uruguay Round of multilateral trade negotiations will be continued by the Subcommittee on Trade on Tuesday, February 1, Wednesday, February 2, and Tuesday, February 8, 1994. The February 1 hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:30 a.m. The hearing on February 2, will be held in room B-318 Rayburn House Office Building, beginning at 1:00 p.m. The February 8 hearing will also be held in room B-318 Rayburn House Office Building, but will begin at 9:30 a.m. If necessary, a hearing will also be held on Tuesday, February 22, 1994, in room 1100 Longworth House Office Building, beginning at 3:00 p.m.

These hearings were previously announced in Committee on Ways and Means press release #19, dated January 6, 1994, and Subcommittee on Trade press release #22, dated January 6, 1994. Testimony will be received only from persons who have previously requested to testify in response to the Subcommittee's press release.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any interested person or organization may file a written statement for inclusion in the printed record of the hearing. Persons submitting written statements for the printed record should submit at least six (6) copies of their statements by the close of business Monday, February 28, 1994, to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the printed record of the hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

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*** NOTICE--CHANGE IN TIME ***

FOR IMMEDIATE RELEASE
THURSDAY, FEBRUARY 3, 1994

SUBCOMMITTEE ON TRADE #24-REVISED
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3625

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN,
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES
CHANGE IN TIME FOR FEBRUARY 22, 1994, HEARING ON
THE TRADE AGREEMENTS RESULTING FROM THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the time has been changed for the hearing on the trade agreements resulting from the Uruguay Round of multilateral trade negotiations tentatively scheduled to be held on Tuesday, February 22, 1994.

This hearing will now begin at 10:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building. All other details remain as previously announced in Subcommittee press release #24, dated January 25, 1994.

* * * * *

Chairman ROSTENKOWSKI. The committee will come to order. Today the Committee on Ways and Means begins its consideration of the results of the Uruguay round of GATT multilateral trade negotiations. Today we will receive testimony from the administration on the extent to which the Uruguay round results achieved U.S. negotiating objectives set forth in the 1988 Omnibus Trade and Competitiveness Act, on the likely economic impact of the agreements, and on their implementation.

Hearings will continue in the Subcommittee on Trade beginning next week to receive testimony from Members of Congress and from the private sector. If the President signs the Uruguay round results on April 15, I anticipate an implementing process similar to that followed by the Congress for the NAFTA last year.

Ambassador Kantor, as you know, last night in the State of the Union address, the President set forth a highly ambitious legislative agenda for this year. Given this ambitious legislative agenda, it is important for the administration to establish as soon as possible the desired timetable for Uruguay round implementation and to provide this committee any other legislative proposals on trade matters for implementation this year. In my view, consideration of the Uruguay round implementing legislation should begin in this committee as soon as possible and be completed in the Congress by this summer.

In concluding, let me state for the record that I fully support the Uruguay round agreements. They represent a unique opportunity to establish the most comprehensive international trading rules and liberalized trading regime in history. These agreements will be signed by well over 100 nations and will create expanded U.S. and global economic growth for many years to come.

I intend to work vigorously for congressional approval of these agreements and the legislation implementing them. Before I welcome the ambassador, I would like to yield to my colleague, Mr. Archer, for a statement.

Mr. ARCHER. Thank you, Mr. Chairman. Welcome, Mr. Ambassador, and congratulations on your achievement in concluding the Uruguay round with an agreement. It has been a long time in coming, beginning back in 1986 under President Reagan and continuing through three administrations. There is a bipartisan connection for all of us.

In my view, a more sweeping trade agenda has never before been attempted by GATT or any international body, and the resulting disciplines over new areas such as intellectual property rights, services, trade, and trade-related investment are unprecedented. This broad approach was pursued largely at the insistence of the United States and under your direction in the last year. We realized how competitive U.S. industries were in these sectors and how trade flows had shifted away from the traditional exchange of goods.

Once again, U.S. leadership set the stage for the successful completion of an ambitious undertaking. The goals were high, and in many instances exceeded, but challenges, as you know, still remain. Negotiations will still continue on telecommunications, aircraft, financial services, audiovisual, and other issues not resolved by the round, and a key question is what negotiating authority and

implementation processes will the administration and Congress want to have addressed in reaching these multilateral issues in the future?

Also, what bilateral negotiating authority is needed for future free trade areas or other bilateral objectives? A new fast track authority, I believe, is needed to maintain the strong role of Congress and to give credibility to U.S. negotiators, and I consider new negotiating authority a key objective for the implementing legislation, and I hope the administration will concur in that.

I would like to make note of the fact that yesterday certain members of the Republican leadership, including myself and my colleague to my left, that is only for physical identification, Mr. Crane, sent you a letter outlining our desire for early approval of the implementing legislation, the need to refrain from adding extraneous matters to the bill, the importance of maintaining U.S. sovereignty in trade agreements, and the need to fully fund the cost of the implementing bill through existing revenues. I hope we can maintain the positive momentum you achieved in reaching what appears to be a widely supported agreement.

We do look forward to working with you, as we did with NAFTA, in a bipartisan spirit to achieve what is important to this country and the rest of the world, and I look forward to your testimony. Welcome.

Ambassador KANTOR. Thank you, sir.

Chairman ROSTENKOWSKI. Mr. Ambassador, you are no stranger to this committee, and I would like to feel that in our deliberations over the GATT proceedings for many years that your suggestion and the President's suggestion that a contingent of this committee visit you in the GATT and that we hope that the 2 or 3 days that we spent there interviewing your fellow ambassadors that we made a significant contribution. That is only determined by how you feel we have done, but I want you to know that I think that in this process on a bipartisan basis you have seen the greatness of the legislative process in helping you and the executive.

I hope that that bipartisan feeling continues and that we can in any way when you are right help you. I feel thoroughly satisfied that you have done a tremendously good job in representing us and in concluding these negotiations. I just hope that we can continue to work together. Welcome, Mr. Ambassador. The committee is ready to take your testimony.

STATEMENT OF HON. MICHAEL KANTOR, U.S. TRADE REPRESENTATIVE

Ambassador KANTOR. Thank you very much, Mr. Chairman, for those kind words. With the committee's permission, I will submit my testimony for the record in full and will talk off the cuff about what we achieved together, and I mean together—the Congress and the administration.

Chairman ROSTENKOWSKI. Your entire statement, Mr. Ambassador, will be included in the record without objection.

Ambassador KANTOR. Thank you very much, Mr. Chairman. Let me first introduce Ambassador John Schmidt, also from a Midwestern city that you are familiar with, Mr. Chairman, who joined this administration and has been our ambassador for the Uruguay

round. In no small measure what we achieved is due to the extraordinary efforts, intelligence, and hard work of John Schmidt, and so he joins me here today from Geneva. He has spent a long time away from his family and away from this country. He will be involved intimately in this process as the ratification of the round, hopefully successfully by both bodies, proceeds.

Let me start off by thanking the Chair and members of the committee from both sides for what you did to help. In no small measure, the complete coordination between this committee and the Congress and members who went to Geneva and the positions taken by this administration, led by Ambassador Schmidt, made a tremendous difference in our ability to get quite dramatic changes in the last 5 or 6 days prior to the conclusion of the Uruguay round negotiations on December 15. It should be noted here that the Congress can take some pride in the fact that the results achieved here are due in no small measure not only to their support in those last days, but over the past 7 years, as Mr. Archer referenced.

Let me also say that there is a Washington disease that I hope I never contract, and that is not giving credit to those who came before me and this administration and the efforts they put in. This is not an agreement that just came together in the last few months. This was worked on by three administrations, as Mr. Archer indicated, and is supported and was supported on a bipartisan basis, so let me give credit to everyone from my predecessors Bob Strauss through Carla Hills, and my fellow Tennessean, Bill Brock; and also let me give credit to President Reagan and President Bush, who put so much effort into trying to achieve what we were able to achieve in this administration.

Let me also say that the commitment by President Clinton to this process, standing fast and making sure this agreement was reached, was critical in making it happen. He recognized early that, one, we had to do it this year or we would lose any momentum; two, we had to engage the Europeans in a bilateral dialog on market access; and three, he personally had to get engaged with world leaders to make it happen, which he did, as you know, over the last 60 days of the process. His telephone calls and meetings with world leaders literally provided the momentum for a successful round.

Let me run quickly through the bases upon which we believe we made such tremendous progress in the negotiation, and what was done specifically. Then, of course, I am obviously available for questions, Mr. Chairman. I will try not to be too long in my statement.

Our economic future depends on our ability to export, as I think everyone here in this room agrees. As we become more productive and as we become more competitive as a society, on the basis of the President's economic program; as we get welfare reform; as we get health care reform; as we begin to technologically take the lead in the world—we have got to open up new markets so we can grow jobs in our country—the obverse is you become more proficient and more productive, yet you don't have new markets. You lose jobs and not gain jobs. So this administration has tried to tie its domestic economic policy to its foreign or trade policy in order to make sure they are in concert; and I believe we are achieving that.

It should be noted that in 1993 not only did we reach agreement on the North American Free Trade Agreement, we opened up the \$20 billion heavy electrical equipment market in Europe. We reached a telecommunications agreement with Korea. We were able to have a successful Asian Pacific economic cooperation forum in Seattle, which is, I think, going to lead from the new trade and investment framework to even a greater engagement for this country in the fastest growing economic region in the world, Asia.

All these things we are doing are tied together with what we have created in the Uruguay round, a World Trade Organization, which addresses the most critical areas for U.S. progress in the future economically. First of all, in market access. This agreement will cut foreign tariffs on manufactured products by over one-third, 50 percent with the European Union. It is the largest decrease in tariffs in world history, and in no small measure that makes our products even more competitive and therefore grows jobs in this country and makes our products even more competitive in overseas markets.

We achieved cuts to zero tariffs in a number of sectors that are critical to us—agricultural equipment, construction equipment, medical equipment, pharmaceuticals, paper, toys, furniture—all of these are areas where we are among the most competitive, if not the most competitive in the world.

We negotiated major tariff cuts in the electronics and computers and semiconductor manufacturing equipment area—from 50 to 100 percent cuts—where we are so competitive around the world. We do have some unfinished business, as Mr. Archer referred to in his statement, with regard to market access. The Japanese Government has not been as forthcoming in going to zero in some areas as we would have liked.

In our agreement with the European Union and Canada, we agreed that in the areas of wood and copper and what they call white spirits—that is to us gin and vodka—and in leather and shoes we would not go to zero unless, of course, Japan opened its market and went to zero tariffs in those areas as well. We are continuing to engage the Japanese in a discussion on this issue, but we have not made as much progress there as we would have liked. However, there will be major cuts in those areas even if we don't get to zero tariffs.

As for nontariff barriers, we successfully negotiated a number of changes in import licensing requirements, in terms of trade-related investment measures, and so on. One of the major achievements of the Uruguay round is opening up agriculture, both in market access, current access, minimum access and what we call tariffication.

Over the years U.S. products in agriculture, which are the most competitive in the world, have been locked out of markets because of nontariff barriers. What we have agreed to, the 117 nations in the Uruguay round negotiations, is to go to what they call tariffication. We have agreed to convert all nontariff barriers to tariffs. They will come down over the years. That will mean we will begin to open up markets substantially not only in Europe, but all around the world.

Let me indicate that the changes that we made in the Blair House agreement itself will lead to the following: On wheat, for example, we are going to get an additional 7.5 million tons over 6 years in exports. In vegetable oil we get an additional 1.2 million tons; on rice, 600,000 tons; and also on eggs, dairy and specialty crops—which come from Florida, especially, Mr. Chairman—we made gains as well.

The Uruguay round will extend fair trade rules to the services sector which, of course, encompasses 60 percent of our economy and 70 percent of our jobs. Eighty-nine countries agreed to new rules in about 80 areas of the economy such as advertising, law, accounting, information, and computer services, environmental services, and so on. The principal elements of the services framework agreement include most-favored-nation treatment, national treatment, market access, transparency, and the free flow of payments and transfers. I can't tell you how important it was to bring services under a world trade agreement in order to make us as competitive as possible. It is so critical to the future of the U.S. economy.

In textiles and apparel we were able to make major changes, frankly, from where these negotiations stood when we came into office. When we came into office the U.S. offer on the table was to cut tariffs on peak textiles tariffs by 50 percent—which would have meant an overall major cut in that area—and to phase out the multifiber arrangement without requiring market access for U.S. textiles and apparel as a tradeoff.

We were able to do three very important things. One, we cut tariffs not by 50 percent, but by 12 percent overall in the textile area. It was 33 percent overall, so you can see how other goods were cut much more than this area. No. 2, we insisted that the phaseout for the multifiber arrangement, although 10 years and not the 15 we wanted, is tied to market access.

In other words, the increase in quotas allowed to countries as we phase out the multifiber arrangement is not going to be available if, in fact, countries do not allow market access for our textile and apparel products. That is a critical element. Third, we got language on anticircumvention which will be very helpful. As you know, we just had a dispute—which was settled, frankly, favorably to the United States—with China with regard to circumventing our quota laws and illegally transshipping goods into the United States.

The agreement in trade-related intellectual property rights or TRIPs is a landmark. It establishes for the first time detailed multilateral obligations to provide and enforce intellectual property rights under the World Trade Organization.

In the area of copyright, the text resolves some key trade problems for U.S. software, motion picture and recording interests by protecting computer programs as literary works and databases as compilations, granting owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products, which is absolutely essential, establishing 50 year terms of protection for sound recordings, and so on.

These are agreements that are critical to our future industries, the industries that are going to grow exponentially in our country. As you know, we were not happy with the antidumping language in the so-called Draft Final Act or Dunkel text. We sought eight or

nine major changes, and frankly, with Ambassador Schmidt's leadership, were able to achieve them all, including preserving standing for unions to bring dumping cases. The text does not limit U.S. discretion to discipline diversionary dumping.

We succeeded in winning agreement to an explicit standard of review, which was critical. The antidumping agreement will require some changes in our antidumping law, but these details, while requiring some minor changes, will provide significant benefit to us without requiring us to in any way limit the effectiveness of our antidumping laws. Our companies, by the way, have been increasingly the subject of antidumping actions on the part of other countries. We believe the procedures agreed upon protect us against unfair and unreasonable acts by other countries while making sure our antidumping laws were protected.

The subsidies agreement marks a major step forward from the 1979 Subsidies Code in disciplining subsidies. There are three levels of subsidies. The agreement allows subsidies in certain areas, such as research—basic and applied through the prototype stage—for one time investment in environmental cleanup, and for certain kinds of regional subsidies—but not assistance for specific industries and regions, which is important.

It prohibits subsidies in a wide range of areas; subsidies above 5 percent and presumed to cause injury, and last but not least, all other subsidies are countervailable where they cause injury.

We got a strong result on the issues crucial to the aircraft and aerospace industries, an industry which has provided this country in 1993 alone with a \$28 billion trade surplus, \$28 billion. The European Community did not want to put aircraft under the Subsidies Code, neither large civil aircraft nor other aircraft or aircraft parts. It wanted what is called the Chairman's text, which would seriously weaken even the bilateral agreement we have right now with the Europeans on Airbus. Frankly, we were able to win the argument with the Europeans in this. Aircraft is subject to the Subsidies Code with only some minor exceptions. The bilateral agreement stays in place as well, and I think our aerospace industry is well protected as a result of that agreement.

The dispute settlement mechanism which will be implemented if the Congress ratifies this agreement is extremely helpful. For the first time we will have strict time limits—not only on when cases are brought and when panels are impaneled, but also on when the decision will come out and then when you can appeal.

There is no longer a right of blockage under the World Trade Organization. In other words, countries who lose disputes brought by the United States can no longer block as a matter of right, once the appeal has been effected and completed, they will have to implement the decision of the panel, which is important. Most importantly, we have cross-retaliation rights. One of the weaknesses under the GATT was you could win a GATT case, but we had no cross-retaliation. We couldn't retaliate, in other words, in another sector. Under the new World Trade Organization rules, under the leadership of the United States, we made sure there was cross-retaliation, so if, in fact, there is a sector where we receive a favorable ruling on a World Trade Organization case under this dispute settlement mechanism, we can cross-retaliate in another sector in

order to make it effective, in other words, to get what we want out of the case that we brought.

Let me also say that we have strong prohibitions on compulsory licensing for the first time in an international agreement, 11 different prohibitions. The United States, due to the good work of Ambassador Yerxa and Ambassador Schmidt, at 6 in the morning for the fourth straight night we didn't sleep, were able to gain for the semiconductor industry a prohibition on compulsory licensing for commercial use. That is a critical element for our U.S. semiconductor industry, which is a building block of most of our future industries in this country. It was sought by our industry, we believed it was critical, and it was literally only 6 hours before it was announced that we had a final Uruguay round agreement that we received that concession. I don't think you can overestimate how important that is to our electronics industry of the future and how much we owe to Ambassador Yerxa and Ambassador Schmidt for gaining that concession.

Let me mention one more subject before I take questions, and that is section 301. Obviously, I assume each person up here is concerned about whether or not our trade laws are still viable and effective. Let me say that we come back from Geneva and these negotiations with good news. Section 301 is virtually left unaffected by what we did in these negotiations.

When the World Trade Organization goes into effect, we will keep our section 301 and can keep it in effect just as it is with only a minor change under special 301 in terms of the time length of investigation. That is all we have to do. As you know, under the current 301 we already have to go to the GATT first if it is a GATT-covered item and a GATT-covered country. That will be the same situation under the World Trade Organization.

Now, let me be clear. There are more GATT-covered items and more covered countries. Therefore, we will have to go to the GATT on a 301 in more cases. However, if you look at the instances in the past where we have brought 301 actions or have threatened to bring them, almost all of those involve areas that are still not covered by the GATT or countries that still will not be members of the World Trade Organization. If, in fact, a country is carrying on anti-competitive behavior and locking our products out, that is not a GATT-covered item, and we still could bring a 301 action as an unfair trade practice.

If, in fact, a country is not living by a bilateral trade agreement, we don't have to go to the GATT. We can bring a 301 and act unilaterally. So for all intents and purposes, our 301 is preserved, yet we have a better dispute settlement mechanism to go to in the new World Trade Organization in those circumstances where we would even under the current situation have to go to the GATT today. Therefore, I think we have the best of all worlds. We preserve 301, we have a better dispute settlement mechanism multilaterally, and we can still enforce 301 unilaterally in terms of our trade agreements and for non-GATT-covered countries or non-GATT or non-World Trade Organization-covered items.

Mr. Chairman, I would be happy to take the questions of any of the members on this or any other subject.

[The prepared statement follows:]

Testimony to the House Ways and Means Committee
 Ambassador Michael Kantor
 U.S. Trade Representative
 January 26, 1994

THE URUGUAY ROUND:
 GROWTH FOR THE WORLD, JOBS FOR THE U.S.

Introduction

Mr. Chairman, thank you very much. It is a pleasure to be here today to discuss with you the Uruguay Round agreement, which sets the stage for a more competitive and prosperous nation in the coming years and into the next century. I look forward to working with you this spring as we prepare the legislation that will implement the Round, which I hope the Congress will approve.

Mr. Chairman, on December 15, 1993, 117 countries concluded a major agreement to reduce barriers blocking exports to world markets (in agriculture, manufactured goods, and services) as well as to create a more fair, more comprehensive, more effective, and more enforceable set of world trade rules. In order to assure the efficient and balanced implementation of the agreements reached, they also created a new World Trade Organization (WTO).

The Uruguay Round trade agreement is the largest, most comprehensive trade agreement in history. The existing GATT system was incomplete; it was not completely reliable; and it was not serving U.S. interests well. The new agreements open up major areas of trade and provide a dispute settlement system which will allow the U.S. to ensure that other countries play by the new rules they have just agreed to.

The successful conclusion of the Uruguay Round negotiations was an important part of the President's strategy for strengthening the domestic economy. Barely a year ago, President Clinton entered office, faced with daunting challenges in his effort to restore the American Dream.

The economy was stagnant. Unemployment was high, and confidence was down. In just one year, we have turned a corner. Our economy is growing and millions of jobs have been created. People are getting back to work.

But these are just the first steps in preparing our nation for the 21st century. The President is addressing the long-term issues facing our economy.

How do we ensure the American Dream for all? How do we reverse the decline in real wages among workers in this country? How will we compete against the Europeans and the Japanese? How do we eliminate the gap between high-skill workers, for whom opportunities abound, and those lower skilled workers who lack opportunities, and even hope? At a time our workers are the most productive in the world, meaning it takes less workers to do the same work, how do we create new jobs and opportunities?

All of the elements of the President's economic strategy -- reducing the deficit, reforming education, the President's re-employment program, and health care -- are geared towards solving these problems, creating jobs and making our country more prosperous for our children. All of the parts work in tandem, each reinforcing the other.

An essential element in this strategy is to expand and open foreign markets. Expanding trade is critical to our ability to

compete in the global economy and create high-wage jobs. That is why the President spent so much time in 1993 -- with not only the Uruguay Round but also the North American Free Trade Agreement, the establishment of the Japan Framework, the Asia Pacific Economic Cooperation conference to facilitate trade in that region. That is why we vigorously enforced our trade laws which resulted in opening the markets for heavy electrical equipment in Europe, telecommunications in Korea, construction in Japan, and enhanced protection for copyrighted and patented products in a number of nations, led by Taiwan and Thailand.

The U.S. economy is now woven into the global economy. Over a quarter of the U.S. economy is dependent on trade. Where we once bought, sold and produced mostly at home, we now participate in the global marketplace. American workers compete with their foreign counterparts every day, sometimes within the same company. By expanding our sales abroad, we create new jobs at home and we expand our own economy.

The global economy presents rewards not risks. Our greatest risk is in failing to understand the challenge. Jobs related to trade earn, on average, 17 percent more than jobs not related to trade. Prosperity is the partner to change and American workers are at their best when facing the challenges of a new era.

The benefits of trade ripple through our economy. Trade benefits not only the company that exports, but also the company which produces parts incorporated in exported products, the insurance agency which insures exporters, and the grocery store near the exporter's factory. At the same time, increased access to foreign markets and increased competition at home benefit consumers. Lower trade barriers reduce prices, improve the quality, and widen the choice of consumer good. This benefits both families and companies looking for good bargains and good quality.

U.S. workers and companies are poised to take advantage of the dynamics of the global economy, if they have access to foreign markets and can be ensured they are competing on fair terms with their foreign counterparts. Fast growing economies in Latin America and Asia are hungry for American goods. Countries around the globe are embracing market economies and are in need of everything from hospital equipment to consumer goods.

"Made in the USA" still represents a standard of excellence, especially for products that will become more important in the coming century. America leads the world because of our imagination and creativity.

The United States, then, is positioned economically, culturally and geographically to reap the benefits of the global economy.

Economically, because our workers are the most productive in the world, and our economy is increasingly geared towards trade.

Culturally, because of our tradition of diversity, freedom and tolerance will continue to attract the best and the brightest from around the world ensuring that we will never stagnate as a people.

Geographically, because we are at the center of a nexus between our historic trading partners in Europe and Japan, and the new dynamic economies in Latin America and Asia.

Our trade policy is guided by a simple credo. We want to expand opportunities for the global economy, but insist on a similar responsibility from other countries.

Trade is a two way street. After World War II, when the American economy dominated the world, we opened ourselves up, to help

other countries rebuild. It was one of the wisest steps this country ever took, but now we cannot have a one way trade policy. The American people won't support it and the Administration won't stand for it.

For other nations to enjoy the great opportunities here in the U.S. market, they must accept the responsibility of opening their own market to U.S. products and services. Ultimately, it is in their own self interest to do so, because trade fosters economic growth and create jobs in all countries involved. If a country closes itself to U.S. goods and services, they should expect the same from us.

The Uruguay Round ensures American workers are trading on a two-way street; that they benefit from this new globalized economy; that they can sell their products and services abroad; and that they can compete on a level playing field.

President Clinton led the effort to reinvigorate the Uruguay Round and to break the gridlock, which had stalled the negotiations despite seven years of preparation and another seven years of negotiations.

We did not accomplish everything we wanted to in the Uruguay Round. In the services area, we wanted to go further than the world was ready to go. The transition periods for patent and copyright protection are longer than we wanted. We were bitterly disappointed by the European Union's intransigence with respect to national treatment and market access for our entertainment industries.

But the final result is very good for U.S. workers and companies. It helps us to bolster the competitiveness of key U.S. industries, to create jobs, to foster economic growth, to raise our standard of living and to combat unfair foreign trade practices. The agreement will give the global economy a major boost, as the reductions in trade barriers create new export opportunities, and as the new rules give businesses greater confidence that export markets will remain open and that competition in foreign markets will be fair.

More importantly, the final Uruguay Round agreement plays to the strengths of the U.S. economy, opening world markets where we are most competitive. From agriculture to high-tech electronics, to pharmaceuticals and computer software, to business services, the United States is uniquely positioned to benefit from the strengthened rules of a Uruguay Round agreement that will apply to all of our trading partners.

The Uruguay Round

The Uruguay Round is the right agreement at the right time for the United States. It will create hundreds of thousands of high-wage, high-skill jobs here at home. Economists estimate that the increased trade will pump between \$100 and \$200 billion into the U.S. economy every year after the Round is fully implemented.

This historic agreement will

- cut foreign tariffs on manufactured products by over one third, the largest reduction in history;
- protect the intellectual property of U.S. entrepreneurs in industries such as pharmaceuticals, entertainment and software from piracy in world markets;
- ensure open foreign markets for U.S. exporters of services such as accounting, advertising, computer services, tourism, engineering and construction;

- greatly expand export opportunities for U.S. agricultural products by reducing use of export subsidies and by limiting the ability of foreign governments to block exports through tariffs, quotas, subsidies, and a variety of other domestic policies and regulations;
- assure that developing countries live by the same trade rules as developed countries and that there will be no free riders;
- create an effective set of rules for the prompt settlement of disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like; and
- open a dialogue on trade and environment.

This agreement will not

- impair the effective enforcement of U.S. laws;
- limit the ability of the United States to set its own environmental or health standards; or
- erode the sovereignty of the United States to pass its own laws.

The Uruguay Round agreement will create a new organization -- the World Trade Organization -- that will support a fair global trading system into the next century and replace the General Agreement on Tariffs and Trade (GATT).

Some have expressed concern that the Uruguay Round results mean the loss of Section 301. That is simply not an accurate analysis. I have pledged that we will open markets multilaterally where possible and bilaterally where necessary. As a result of the Round we have made Section 301 a more effective tool in the multilateral context as well as preserved its effectiveness bilaterally. We have improved existing trade rules, extended the rules to cover new areas of trade, and strengthened the procedures to enforce the rules. In other words, we will be able to use Section 301 to ensure that the multilateral rules are observed. For issues not covered by the new rules and for countries not members of the WTO, there will be no change in the way we resolve disputes; we will continue to use section 301 bilaterally. In addition, we will not shrink from using Title VII to combat unfair trade.

Notwithstanding tremendous international pressure to weaken antidumping and countervailing duty laws in the Uruguay Round, we were able to preserve the important elements of U.S. practice. These laws will continue to be our most important and most effective response to dumping and subsidies that injure U.S. industries.

As in the past, we will identify those trade barriers that have the most significant impact on our exporters of goods and services and develop a strategy for addressing them. We intend to work closely with Congress in implementing how we go after foreign trade barriers in both the bilateral and multilateral context. We are confident we have no shortage of tools.

While the world has benefitted enormously from the reduction of trade barriers and expansion of trade made possible by the GATT, the GATT rules were increasingly out of step with the real world. They did not cover many areas of trade such as intellectual property and services; they did not provide meaningful rules for important aspects of trade such as agriculture; and they did not bring about the prompt settlement of disputes. The old GATT rules also created unequal obligations among different countries,

despite the fact that many of the countries that were allowed to keep their markets relatively closed were among the greatest beneficiaries of the system.

The WTO will require that all members take part in all major agreements of the Round, eliminating the free-rider problem. From agreements on import licensing to antidumping, all members of the WTO, will belong to all of the major international agreements.

The WTO will also require developing countries -- an increasingly important area of U.S. trade -- to follow the same rules as everyone else after a transition period. They will no longer enjoy the fruits of trade, without accepting responsibility and opening their own markets. The WTO will have a strengthened dispute settlement system, but will allow us to maintain our trade laws and sovereignty.

The WTO plays to the strengths of our economy. For example:

Market Access. The WTO will reduce industrial tariffs by over one third. On exports from the U.S. and the European Community, the reduction is over 50 percent. In an economy increasingly reliant on trade opening markets abroad is absolutely essential to our ability to create jobs and foster economic growth here at home. Our nation's workers are the most productive in the world and reduced tariffs will enable these workers to compete on a more level playing field.

Agriculture. U.S. farmers are the envy of the world, but too often they were not able to sell the products of their hard labor abroad, because the old GATT rules did not effectively limit agricultural trade barriers. Many countries have kept our farmers out of global markets by limiting imports and subsidizing exports. These same policies have raised prices for consumers around the world.

The Uruguay Round agreements will reform policies that distort the world agricultural market and international trade in farm products. By curbing policies that distort trade, in particular export subsidies, the World Trade Organization will open up new trade opportunities for efficient and competitive agricultural producers like the United States.

Services. The WTO will extend fair trade rules to a sector that encompasses 60% of our economy and 70% of our jobs: services. Uruguay Round participants agreed to new rules affecting around eighty areas of the economy such as advertising, law, accounting, information and computer services, environmental services, engineering and tourism. When a company makes a product, it needs financing, advertising, insurance, computer software, and so forth. Competition for these services is now global. We lead the world in this sector with nearly \$180 billion in exports annually. The WTO will implement new rules on trade in services, which will ensure our companies and workers can compete fairly in the global market. While in certain key areas, such as telecommunications and financial services, the U.S. did not obtain the kind of market access commitments we were seeking, we kept our leverage by refusing to grant MFN treatment to our trading partners, and continued negotiations.

Intellectual Property. Creativity and innovation is one of America's greatest strengths. American films, music, software and medical advances are prized around the globe. The jobs of thousands of workers here in this country are dependent on the ability to sell these products abroad. Royalties from patents, copyrights, and trademarks are a growing source of foreign earnings to the U.S. economy.

The World Trade Organization will administer international rules to protect Americans from the global counterfeiting of their creations and innovations. These are the areas which represent some of the most important U.S. industries of the future. Stemming the tide of counterfeiting works to protect U.S. companies and workers, particularly as U.S. exports of intellectual property goods increase annually.

For example, our semiconductor industry is a driving force for U.S. technology advances and competitiveness. These products affect nearly every aspect of our lives and are incorporated in many of the goods traded internationally.

The TRIPS agreement is the first international agreement that places stringent limits on the grant of patent compulsory licenses for this critical technology. Under TRIPS, this industry's patents and layout designs can not be used for commercial purposes without the permission of the patent or design owner.

In short, the Uruguay Round agreements set the stage for free and fair trade in the world, and global prosperity and partnership at the end of this century and into the next.

INDUSTRIAL MARKET ACCESS

The United States achieved substantially all of its major objectives in the industrial goods market access negotiations. As a result, increased market access opportunities will be available to U.S. exporters of industrial goods.

Key provisions of the market access for goods agreement include:

- o Expanded market access for U.S. exporters through tariff reductions secured from countries which represent approximately 85 percent of world trade;
- o The elimination of tariffs in major industrial markets, and significantly reduced or eliminated tariffs in many developing markets, in the following areas:
 - Construction Equipment
 - Agricultural Equipment
 - Medical Equipment
 - Steel
 - Beer
 - Distilled spirits
 - Pharmaceuticals
 - Paper
 - Toys
 - Furniture
- o Deep cuts ranging from 50 - 100 percent on important electronics items (semiconductors, computer parts, semiconductor manufacturing equipment) and on scientific equipment by major U.S. trading partners; and
- o Harmonization of tariffs by developed and major developing countries in the chemical sector at very low rates (0, 5.5 and 6.5 percent).
- o Vastly increased scope of bindings at reasonable levels from developing countries, which will ensure predictability and certainty for traders in determining the amount of duty that will be assessed.

In general, most tariff reductions will be implemented in equal annual increments over 5 years. Some tariffs, particularly in sectors where duties will fall to zero, such as pharmaceuticals,

will be eliminated when the agreement enters into force. Other tariffs, particularly in sensitive sectors, including some sensitive sectors for the United States, will be phased-in over a period of up to ten years.

As part of the United States offer, many non-controversial duty suspensions introduced in the 102nd Congress, as well as many introduced in the 103rd Congress, were made permanent. Implementation of these reductions will occur on entry into force of the Agreement.

We still have some unfinished business to address including finalizing our negotiations with Japan. The Japanese offers do not respond to U.S. requests for Japan's participation in duty-elimination initiatives for wood, white spirits and copper, or substantial reductions in leather and footwear and certain chemicals. Similarly, work is still required to complete market access negotiations with certain developing countries where we will continue to press for reduction in areas such as textiles and adherence to the chemical harmonization proposal agreed by most of our major trading partners.

The schedule for finalizing the results of the market access negotiations requires governments to submit draft final schedules on or before February 15, 1994, and final schedules by March 31, 1994. A process of verification and rectification is required. Additionally, the United States is encouraging other partners that have not yet done so to improve existing offers to match the U.S. contribution.

AGRICULTURE

The Uruguay Round agreement on agriculture strengthens long-term rules for agricultural trade and assures the reduction of specific policies that distort agricultural trade. U.S. agricultural exports will benefit significantly from the reductions in export subsidies and the market openings provided by the agriculture agreement.

The United States was successful in its effort to develop meaningful rules and explicit reduction commitments in each area of the negotiations: export subsidies, domestic subsidies and market access. For the first time, agricultural export subsidies and trade-distorting domestic farm subsidies are subject to explicit multilateral disciplines, and must be bound and reduced. In the area of market access, the United States was successful in achieving the principle of comprehensive tariffication which will lead to the removal of import quotas and all other non-tariff import barriers. Under tariffication, protection provided by non-tariff import barriers is replaced by a tariff and minimum or current access commitments are required. For the first time, all agricultural tariffs (including the new tariffs resulting from tariffication) are bound and reduced.

Reduction commitments will be phased in during 6 years for developed countries and 10 years for developing countries. Budgetary outlays for export subsidies must be reduced by 36 percent and quantities exported with export subsidies cut by 21 percent from a 1986-90 base period. Non-tariff import barriers such as variable levies, import bans, voluntary export restraints and import quotas, are subject to the tariffication requirement. For products subject to tariffication, current access opportunities must be maintained and minimum access commitments may be required. Existing tariffs and new tariffs resulting from tariffication will be reduced by 36 percent on average (24 percent for developing countries) with a minimum reduction of 15 percent for each tariff line item (10 percent for developing countries). All tariffs will be bound.

Trade-distorting internal farm supports must be reduced by 20 percent from 1986-88 base period levels, allowing credit for farm support reductions undertaken since 1986. Direct payments that are linked to production-limiting programs will not be subject to the reduction commitment if certain conditions are met. Domestic support programs meeting criteria designed to insure that the programs have no or minimal trade distorting or production effects ("green box") also are exempted from reduction commitments. Due to the farm support reductions contained in the 1985 and 1990 Farm Bills, the United States has already met the 20 percent requirement and will not need to make additional changes to farm programs to comply with the Uruguay Round commitments.

Internal support measures and export subsidies that fully conform to reduction commitments and other criteria will not be subject to challenge for nine years. However, subsidized imports will continue to be subject to U.S. countervailing duty procedures, except for domestic support meeting the "green box" criteria, which will be exempt from countervailing duty actions for nine years.

TEXTILES AND CLOTHING

The textile and apparel sector has always been a critical one in this Round. From the very beginning of the negotiations at Punta Del Este, the developing countries have linked their willingness to accept disciplines in services and intellectual property, as well as further market opening, on the achievement of the phase-out of the Multifiber Arrangement (MFA). The MFA has governed trade in textiles and clothing for the past 20 years.

The Administration, however, was equally insistent on five key goals: 1) that the phase-out occur in a gradual manner that would permit our industry to adjust over time to the changes in the trading system; 2) that foreign markets be opened to U.S. textile and clothing exports for the benefit of U.S. workers; 3) that the U.S. retain control over which products would be integrated into the GATT at each stage of the phase-out period; 4) that strong safeguards be included in order to provide protection in the event of damaging surges in imports during the phase-out period; and 5) that in light of the phase-out of the MFA, that tariff cuts in this sector be held to a minimum.

We believe we have done very well in achieving those goals. While some in the sector had favored a 15-year phase-out of the MFA, we believe the 10-year period and the manner in which the phase-out in structured will give us ample tools to ensure a smooth transition. No limitations were placed on our right to make our own decisions about which products would be integrated at any given stage of the phase-out. This will ensure that the Administration can take into account the sensitivity of any given item in determining when quotas would be removed from that product in order to integrate it into the GATT.

In addition, the agreement includes strong safeguards that will allow us to take action against any import surges that might occur during the phase-out period.

In the area of tariffs, in recognition of the fact that the MFA will be phased out, the Administration resisted EC demands to cut all our peak tariffs by 50%. In fact, while the average U.S. tariff cut on all industrial items is 34 percent, the U.S. offer reduces textile and clothing tariffs by less than 12 percent overall. Particularly sensitive products received an even lower cut.

We also fought hard for commitments to open markets abroad for U.S. textile and apparel products. While we made very

substantial progress in opening markets in most countries, we refused to close on inadequate offers -- notably those of India and Pakistan-- and are working vigorously to secure improved offers from these and other countries. We also ensured that non-WTO members, such as China, would not receive the benefit of the MFA phaseout until they become members of the WTO.

SAFEGUARDS

The Safeguards agreement incorporates many concepts long included in U.S. law -- Section 201 of the Trade Act of 1974 -- ensuring that all countries will use comparable rules and procedures when taking safeguard actions. The agreement provides for suspending the automatic right to retaliate for the first three years of a safeguard measure; thus providing an incentive for countries to use WTO safeguard rules when import-related, serious injury problems occur.

ANTIDUMPING

The U.S. objectives in the Uruguay Round antidumping negotiations were to improve transparency and due process in antidumping proceedings, develop disciplines on diversionary dumping, and ensure that the antidumping rules continue to provide an effective tool to combat injurious dumping. The Agreement substantially achieves these objectives.

In preparation for the final Uruguay Round negotiations, Members of Congress and U.S. industries identified several issues that would have to be addressed to make the so-called Dunkel Draft Antidumping Agreement acceptable to the United States, including: standard of review, anti-circumvention, sunset, union and employee standing, and cumulation. As of December 1, 1993, there was neither any support for U.S. proposals to improve the Dunkel Draft nor any set procedure for consideration of such proposals other than the assertion that changes would be made only by consensus -- a virtually impossible condition.

Given these circumstances, it is remarkable that U.S. negotiators were able to achieve significant results in each of the areas identified as requiring change. The most important changes -- and those that made the final agreement acceptable to the United States -- include:

- o Addition of an explicit standard of review that will make it more difficult for dispute settlement panels to second-guess U.S. antidumping determinations;
- o Removal of the anti-circumvention provision which would have weakened existing U.S. anti-circumvention law;
- o Modification of a rigid sunset provision that would have required near-automatic termination of antidumping orders after five years;
- o Addition of express authorization for the ITC's practicing of "cumulating" imports from different countries in determining injury to a domestic industry;
- o Improvements in the standing provisions that protect the rights of unions and workers to file and support antidumping petitions and that clarify the degree of support required for initiating an investigation.

In addition to these changes, there are other important aspects of the final Antidumping Agreement that make it a good agreement for the United States. One such aspect is the transparency and due process requirements proposed by the United States at the

beginning of the Uruguay Round and accepted in their entirety. For example, the Agreement requires investigating authorities to provide public notice and written explanations of their actions. These new requirements should benefit U.S. exporters by improving the fairness of other countries' antidumping regimes.

The Agreement also incorporates important aspects of U.S. antidumping practice not previously recognized under the 1979 Antidumping Code. These fundamental aspects of U.S. antidumping practice are now immune from GATT challenge. For example, the agreement expressly authorizes the International Trade Commission's "cumulation" practice of collectively assessing injury due to imports from several different countries and the Department of Commerce's practice of disregarding below costs sales, if they are substantial, in determining fair value for export sales.

The Antidumping Agreement will require some changes in existing U.S. antidumping law. These changes, however, will not jeopardize our ability to combat unfair trade practices. Many of these changes are the result of the much greater detail in the new Agreement concerning the methodology investigating authorities may apply in conducting antidumping investigations. These methodological definitions will add valued predictability to all antidumping practices and protect conforming U.S. practices from GATT challenge.

SUBSIDIES AND COUNTERVAILING MEASURES

The Subsidies agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies non-actionable, provided they are subject to conditions designed to limit distorting effects. The Agreement creates three categories of subsidies and remedies: (1) prohibited subsidies; (2) permissible subsidies which are actionable if they cause adverse trade effects; and (3) permissible subsidies which are non-actionable if they are structured according to criteria intended to limit their potential for distortion.

The Agreement prohibits export subsidies, including de facto export subsidies, and subsidies contingent upon the use of local content. It also establishes a presumption of serious prejudice in situations where the total ad valorem subsidization of a product exceeds 5 percent, or when subsidies are provided for debt forgiveness or to cover operating losses.

Subject to specific, limiting criteria, the Agreement makes three types of subsidies non-actionable. Government assistance for industrial research and development is non-actionable if the assistance for "industrial research" is limited to 75 percent of eligible research costs and the assistance for "pre-competitive development activity" (through the creation of the first, non-commercial prototype) is limited to 50 percent of eligible costs. This will enable the Clinton Administration to continue to cooperate with industry to develop the technologies of tomorrow without the threat of countervailing duty actions, while ensuring that other countries cannot provide development or production subsidies free from such actions.

Government assistance for regional development is non-actionable to the extent that the assistance is provided within regions that are determined to be disadvantaged on the basis of neutral and objective criteria and the assistance is not targeted to a specific industry or group of recipients within eligible regions. Finally, government assistance to meet environmental requirements is non-actionable to the extent that it is limited to a one-time measure equivalent to 20 percent of the costs of adapting existing facilities to new standards and does not cover any manufacturing cost savings which may be achieved.

Both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice will expire automatically 5 years after the entry into force of the agreement, unless it is decided to continue them in current or modified form.

The Agreement also makes countervailing duty rules more precise, and in many cases reflects U.S. practice and methodologies. For example, for the first time, GATT rules will explicitly recognize U.S. "benefit-to-the-recipient" standard. In addition, the Agreement imposes multilateral subsidy disciplines on developing countries. Although subject to certain derogations, a framework has been established for the gradual elimination of export subsidies and local content subsidies maintained by developing countries.

TRADE-RELATED INVESTMENT MEASURES

The TRIMS Agreement prohibits local content and trade balancing requirements. This prohibition will apply whether the measures are mandatory or are required in return for an incentive. A transition period of 5 years will be given developing countries to eliminate existing prohibited measures, but only if they notify the GATT regarding each specific measure. Only a two-year transition is provided for developed countries.

Not later than 5 years after entry into force of the WTO Agreement there will be a review of the operation of the Agreement. As part of this review, the WTO Council for Trade in Goods will consider whether the Agreement should be complemented with provisions on investment policy and competition policy.

There are four agreements covering customs-related matters. The **Import Licensing Agreement** more precisely defines automatic and non-automatic licensing. The agreement will help ensure that where countries continue to maintain import licensing regimes, the procedures required to obtain a license are no more burdensome than necessary.

New provisions in the **Customs Valuation Agreement** will facilitate developing countries' adherence to the Code, and the dispute settlement provisions of the Code have been aligned with the tougher integrated dispute settlement provisions.

The **Preshipment Inspection Agreement** requires countries which use pre-shipment inspection companies to supplement or replace national customs services to ensure that the activities of PSI companies will be carried out on a non-discriminatory basis for all exporters; that quantity and quality inspections are in accordance with international standards; that inspection operations will be performed in a transparent manner and exporters will be immediately informed of all procedural requirements necessary to obtain a clean report of findings; and that unreasonable delays be avoided in the inspection process. In addition, the Agreement establishes an independent, binding review procedure to expedite the resolution of grievances or disputes that cannot be resolved bilaterally. These changes should ensure that the activities of PSI companies do not impede or place undue burdens on U.S. exporters.

The **Rules of Origin Agreement** establishes a three-year work program to harmonize rules of origin among WTO Members. The Agreement also establishes a Committee which is to work with a Customs Cooperation Council Technical Committee to develop detailed definitions on which to base these harmonized rules of origin. During the transition period, criteria used to establish origin must precisely and specifically define the requirements to be met. These rules of origin are not to be used to influence trade or to create distortions or restrictions of trade. In

addition, countries are required to publish changes to their rules of origin at least sixty days before such changes come into effect.

TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade improves the rules respecting standards and technical regulations. In particular, the agreement provides that standards, technical regulations and conformity assessment procedures (e.g., testing, inspection, certification, quality system registration, and other procedures used to determine conformance to a technical regulation or standard) are not discriminatory or otherwise used by governments to create unnecessary obstacles to trade. The Agreement improves disciplines concerning the acceptance of results of conformity assessment procedures by another country and enhances the ability of a foreign-based laboratory or firm to gain recognition under another country's laboratory accreditation, inspection or quality system registration scheme. The Agreement includes a process for the exchange of information, including the ability to comment on proposed standards-related measures made by other WTO Members and a central point of contact for routine requests for information on existing requirements. Furthermore, unlike the existing TBT Code every country that is a Member of the new WTO will be required to implement the new TBT Agreement.

The new TBT Agreement ensures that each country has the right to establish and maintain standards and technical regulations at its chosen level of protection for human, animal and plant life and health and of the environment, and for prevention against deceptive practices. The Agreement generally encourages the use by governments of international standards, when possible and appropriate. At the same time it provides that each country may determine its appropriate level of protection and ensures that the encouragement to use international standards will not result in downward harmonization.

SANITARY AND PHYTOSANITARY MEASURES

The Agreement on the Application of Sanitary and Phytosanitary ("S&P") Measures will guard against the use of unjustified S&P measures to keep out U.S. agricultural exports. S&P measures are laws, regulations and other measures aimed at protecting human, animal and plant life and health from risks of plant- and animal borne pests and diseases, and additives and contaminants in foods and feedstuffs. They include a wide range of measures such as quarantine requirements and procedures for approval of food additives or for the establishment of pesticide tolerances. The S&P agreement is designed to distinguish legitimate S&P measures from trade protectionist measures. For example, S&P measures must be based on scientific principles and not maintained without sufficient scientific evidence and must be based on an assessment of the risk to health, appropriate to the circumstances.

The S&P agreement safeguards U.S. animal and plant health measures and food safety requirements. The agreement clearly recognizes and acknowledges the sovereign right of each government to establish the level of protection of human, animal and plant life and health deemed appropriate by that government. Furthermore, the United States has a long history of basing its S&P measures on scientific principles and risk assessment.

In order to facilitate trade, the S&P agreement generally requires the use of international standards as a basis for S&P measures. However, each government remains free to adopt an S&P measure more stringent than the relevant international standard where the government determines that the international standard

does not provide the level of protection that the government deems appropriate.

Because there may often be a range of S&P measures available to achieve the same level of protection, the agreement provides for an importing member to treat another member's S&P measure as equivalent to its own if the exporting member shows that its measures achieve the importing member's level of protection. The agreement also provides for adapting S&P measures to the sanitary or phytosanitary characteristics of a region, in particular calling for recognition of pest or disease free areas and areas of low pest or disease prevalence. For example, if an exporting member can assure an importing member that a particular area or region is free of pests or diseases of concern to the importing member, the exporting member should be able to trade from that area.

Finally, there are provisions for transparency of S&P measures, including public notice and comment and the maintenance of inquiry points where information about S&P measures can be obtained.

In the final days of the negotiations, the United States was able to obtain several improvements in the S&P agreement to respond to environmental concerns. The original S&P text provided that S&P measures must "...not be maintained against available scientific evidence." This language was unclear and did not take account of the fact that there is often conflicting scientific evidence. This section of the Agreement was changed to "...not maintained without sufficient scientific evidence, except as provided in paragraph 22." Paragraph 22 allows a member to provisionally adopt S&P measures on the basis of available pertinent information where there is insufficient relevant scientific evidence.

To clarify that there no "downward harmonization" of S&P measures is required under the agreement, the U.S. obtained an explanatory footnote to paragraph 11, which provides that a "scientific justification" is one basis for introducing or maintaining a measure more stringent than the relevant international standard. The footnote explains that "there is a scientific justification if, on the basis of an examination and evaluation of available scientific information..., a Member determines that the relevant international standards, ... are not sufficient to achieve its appropriate level of protection."

The United States also succeeded in obtaining changes to the original S&P text requirement that members "ensure that ... measures are the least restrictive to trade, taking into account technical and economic feasibility." This language was unclear and could be given an overly narrow, unreasonable interpretation. The revised language requires that members ensure that their S&P measures are "not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility." In addition, a footnote was inserted clarifying that a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade. These two changes make it clear that a member is not required to adopt unreasonable S&P measures or to change a measure based on insignificant trade effects.

SERVICES

The General Agreement on Trade in Services (GATS) is the first multilateral, legally enforceable agreement covering trade and investment in the services sectors. The GATS also provides a

specific legal basis for future negotiations aimed at eliminating barriers that discriminate against foreign services providers and deny them market access. The principal elements of the GATS framework agreement include most-favored-nation (MFN) treatment, national treatment, market access, transparency and the free flow of payments and transfers. The rules embodied in the framework are augmented by sectoral annexes dealing with issues affecting financial services, movement of personnel, enhanced telecommunications services and aviation services.

Complementing the framework rules and annexes are binding commitments to market access and national treatment in services sectors that countries schedule as a result of bilateral negotiations. In order to fulfill the market access and national treatment provisions of the GATS, each government has submitted a schedule of market access commitments in services which will become effective upon entry into force of the GATS. Countries are also permitted to take one-time exemptions from the most-favored-nation provision in the GATS. Schedules of commitments include horizontal measures such as commitments regarding movement of personnel and service providers. The schedules also include commitments in specific sectors, such as: professional services (accounting, architecture, engineering), other business services (computer services, rental and leasing, advertising, market research, consulting, security services), communications (value-added telecommunications, couriers, audio-visual services), construction, distribution (wholesale and retail trade, franchising), educational services, environmental services, financial services (banking, securities, insurance), health services and tourism services. Maritime and civil aviation commitments were also scheduled by a small number of countries.

The GATS contains a strong national treatment provision that requires a country to accord to services and services suppliers of other countries treatment no less favorable than that accorded to its own services and services suppliers. It specifically requires GATS countries to ensure that their laws and regulations do not tilt competitive conditions in the domestic market against foreign firms in services sectors listed in its schedule of commitments.

The GATS also includes a market access provision which incorporates disciplines on six types of discriminatory measures that governments frequently impose to limit competition or new entry in their markets. These laws and regulations -- such as restrictions on the number of firms allowed in the market, economic "needs tests" and mandatory local incorporation rules -- are often used to bar or restrict market access by foreign firms. A country must either eliminate these barriers in any sector that it includes in its schedule of commitments or negotiate with its trading partners for their limited retention.

For services companies who benefit from sectoral commitments, the framework also guarantees the free flow of current payments and transfers. The provision on transparency requires prompt publication of all relevant measures covered by the agreement. Subject to negotiations, specific laws or regulatory practices may be exempted from MFN treatment, by listing them in an annex provided for that purpose. This mechanism allows countries to preserve their ability to use unilateral measures as a means of encouraging trade liberalization.

Given the breadth and complexity of the services sector, the GATS provides for the progressive liberalization of trade in services. Successive negotiations may be commenced at five-year intervals to allow improvements in market access and national treatment commitments and to allow liberalization of MFN exemptions. The GATS also sets out terms for the negotiation of several framework provisions which currently contain no substantive disciplines

such as subsidies, government procurement, and emergency safeguard actions. In addition, Ministerial Decisions related to the GATS establish work programs in several areas such as trade and the environment, basic telephone services, maritime transport services and reduction of barriers to trade in professional services. Moreover, while there were no commitments from the European Union on audio-visual, the sector is fully covered by GATS and the Administration will aggressively pursue the interests of this industry through a variety of channels.

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Trade in U.S. goods and services protected by intellectual property rights reflects a consistent trade surplus. For example, U.S. copyright industries--movies, computer software, and sound recordings--are consistently top U.S. export earners. U.S. semiconductors are found in the computers and appliances we all use each day. U.S. pharmaceutical companies are among the most innovative, and our exports of these important products have been growing. Strengthened protection of intellectual property rights and enforcement of those rights as provided in the TRIPS agreement will enhance U.S. competitiveness, encourage creative activity, and expand exports and the number of jobs.

The TRIPS agreement establishes, for the first time, detailed multilateral obligations to provide and enforce intellectual property rights. The Agreement obligates all Members to provide strong protection in the areas of copyrights and related rights, patents, trademarks, trade secrets, industrial designs, geographic indications and layout designs for integrated circuits.

In the area of **copyrights** the text resolves some key trade problems for U.S. software, motion picture and recording interests by:

- o protecting computer programs as literary works and databases as compilations;
- o granting owners of computer programs and sound recordings the right to authorize or prohibit the rental of their products;
- o establishing a term of 50 years for the protection of sound recordings as well as requiring Members to provide protection for existing sound recordings; and
- o setting a minimum term of 50 years for the protection of motion pictures and other works where companies may be the author.

In the area of **patents** the Agreement resolves long-standing trade irritants for U.S. firms. Key benefits are:

- o product and process patents for virtually all types of inventions, including pharmaceuticals and agricultural chemicals;
- o meaningful limitations on the ability to impose compulsory licensing, particularly on semiconductor technology; and
- o a patent term of 20 years from the date the application is filed.

As for **trademarks**, the Agreement:

- o requires trademark protection for service marks;
- o enhances protection for internationally well-known marks;

- o prohibits the mandatory linking of trademarks; and
- o prohibits the compulsory licensing of marks.

The Agreement also provides rules for the first multilaterally agreed standards for protecting trade secrets, and improved protection for layout designs for integrated circuits. Provisions on protection for geographic indications and industrial designs are consistent with U.S. law and regulations.

Most importantly, countries are then obligated to provide effective enforcement of these standards, including meeting due process requirements and providing the remedies required to stop and prevent piracy.

While the transition period for developing countries is too long and we must still work to ensure that U.S. sound recording and motion picture producers and performers receive national treatment and obtain the benefits that flow from their products, the TRIPs agreement is a major step forward in guaranteeing that all countries provide intellectual property protection and deny pirates safe havens.

DISPUTE SETTLEMENT

The Dispute Settlement Understanding (DSU) creates new procedures for settlement of disputes arising under any of the Uruguay Round agreements. The new system is a significant improvement on the existing practice. In short, it will work and it will work fast.

The process will be subject to strict time limits for each step. There is a guaranteed right to a panel. Panel reports will be adopted unless there is a consensus to reject the report and a country can request appellate review of the legal aspects of a report. The dispute settlement process can be completed within 16 months from the request for consultations even if there is an appeal. Public access to information about disputes is also increased.

After a panel report is adopted, there will be time limits on when a Member must bring its laws, regulations or practice into conformity with panel rulings and recommendations, and there will be authorization of retaliation in the event that a Member has not brought its laws into conformity with its obligations within that set period of time.

The automatic nature of the new procedures will vastly improve the enforcement of the substantive provisions in each of the agreements. Members will not be able to block the adoption of panel reports. Members will have to implement obligations promptly and the United States will be able to take trade action if Members fail to act or obtain compensation. Trade action can consist of increases in bound tariffs or other actions and increases in tariffs may be authorized even if there is a violation of the TRIPs or Services agreements.

The DSU includes improvements in providing access to information in the dispute settlement process. Parties to a dispute must provide non-confidential summaries of their panel submissions that can be given to the public. In addition, a Member can disclose its submissions and positions to the public at any time that it chooses. Panels are also expressly authorized to form expert review groups to provide advice on scientific or other technical issues of fact which should improve the quality of decisions.

WORLD TRADE ORGANIZATION

The Agreement Establishing the World Trade Organization (WTO) encompasses the current GATT structure and extends it to new disciplines that have not been adequately covered in the past. The new organization will be more credible and predictable and thus benefit U.S. trade interests.

The WTO will help to resolve the "free rider" problem in the world trading system. The WTO system is available only to countries that are contracting parties to the GATT, agree to adhere to all of the Uruguay Round agreements, and submit schedules of market access commitments for industrial goods, agricultural goods and services. This will eliminate the shortcomings of the current system in which, for example, only a handful of countries have voluntarily adhered to disciplines on subsidies under the 1979 Tokyo Round agreement.

The WTO Agreement establishes a number of institutional rules that will be applied to all of the Uruguay Round agreements. We do not expect that the organization will be different in character from that of the existing GATT and its Secretariat, however, nor is the WTO expected to be a larger, more costly, organization.

GATT ARTICLES

The mandate of the GATT Articles negotiating group was to discuss improvements to any GATT provision not being negotiated elsewhere. The balance-of-payments reform (BOP) text increases disciplines and transparency over the use of BOP measures. The state trading text affirms the obligation of GATT contracting parties to ensure that their state trading enterprises -- government-operated import/export monopolies and marketing boards, or private companies that receive special or exclusive privileges from their governments -- operate in accordance with GATT rules. The text on preferential trading arrangements clarifies the GATT rules that pertain to regional arrangements (customs unions and free trade arrangements) and defines the state/local relationship in regard to GATT obligations. The understanding on waivers of obligations will ensure that waivers are time-limited and that are subject to greater conditions and disciplines. There also are clarifications of GATT Articles II:1(b) (regarding "other duties or charges") and Article XXIV (regarding tariff negotiations).

TRADE POLICY REVIEW MECHANISM

The Final Act confirms an April 1989 agreement establishing the Trade Policy Review Mechanism (TPRM), which examine, on a regular basis, national trade policies and other economic policies having a bearing on the international trading environment.

GOVERNMENT PROCUREMENT

The new GATT Government Procurement Code is a substantial improvement over the existing Code, significantly expanding the value of procurement opportunities covered by other countries and altering the character of the agreement to one much more rooted in reciprocity. For the first time, Code coverage is expanded to services and construction. It also opens the way for substantial coverage of subcentral governments and government-owned enterprises.

The new Code is like the old Code in limiting membership to those countries that specifically accede to it. Membership in the WTO does not necessarily lead to membership in the Procurement Code.

The new Code departs from the old one, however, in creating a structure that makes reciprocity more workable between individual countries and actively encourages new countries to join. By authorizing departures from most-favored-nation (MFN) treatment, the new Code ensures that our relationships with all signatory countries are strictly reciprocal.

The new Code also provides improved disciplines. It restricts distorting practices such as offsets and ensures more effective enforcement through the establishment of national bid challenge systems, while also increasing flexibility in certain procedural requirements to adapt the Code to new efficiencies in procurement, like those contemplated in the Vice President's Reinventing Government proposals.

In negotiations on coverage, the United States offered a substantial value of our states procurement to countries that were willing to address our priorities in their procurement markets. Since there was a consensus to allow exceptions to MFN coverage, we were able to agree to cover our states for countries (Korea, Israel and Hong Kong) that offered substantial coverage of their subcentral governments and government-owned enterprises and not be forced to extend our states coverage to countries whose offers fell short.

We leave open the possibility, however, of extending coverage with any one country through bilateral negotiations in the future. Most importantly, the United States and the European Union agreed to accomplish this by April 15 of this year. We expect this expanded coverage to include the European Unions's electrical sector under the Code and telecommunications sector under a separate, but parallel, bilateral agreement.

Finally, the new Code agreement sets the stage for new countries to accede and subject their procurement practices to international disciplines. The most recent addition is the Republic of Korea, which completed its accession with the conclusion of negotiations on the new Code. We expect that Taiwan, the Peoples Republic of China and Australia may soon follow as new signatories to the Code.

AIRCRAFT

Aircraft trade issues had been contentious throughout the negotiations because the European Community sought to have aircraft entirely excluded from the disciplines of the new UR Agreement on Subsidies and Countervailing Measures. Instead, the EC appeared intent on substituting a weaker discipline, having a revised Agreement on Trade in Civil aircraft entirely supersede any new subsidies agreement for aircraft products.

In the final week of negotiations, it became clear that the draft Aircraft Agreement had serious shortcomings. That text, if adopted, would have provided no new disciplines on production or development subsidies, nor would it have increased public transparency of government supports to aircraft manufacturers, such as those to the Airbus Consortium. Instead, the proposed revised Aircraft Agreement would have weakened those disciplines by allowing additional subsidies. Most significantly, past supports to Airbus would have been "grandfathered", completely exempting them from action under Subsidies Agreement. Moreover, certain provisions of the text might have provided a pretext for unjustified GATT action against our military and NASA research programs -- programs that have also provided benefits to the Europeans and are in no way comparable to the immense state subsidies that have been systematically provided to Airbus for civil aircraft development and production.

While we worked hard to negotiate to remedy these insufficiencies, U.S. proposals were not adequately reflected in revisions to the Aircraft Agreement. Such an outcome was clearly unacceptable both to the U.S. industry and to the U.S. Government. Just days before the end of the negotiations, the U.S. stood firm and refused to accept the draft Aircraft text as the basis for an agreement.

As a result of our resolve, the EC, and subsequently all other countries negotiating the Uruguay Round, agreed to bring aircraft under the stronger disciplines of the new Agreement on Subsidies (with only minor changes) and the more expeditious and certain dispute settlement procedures contained in the UR dispute settlement agreement. The Subsidies Agreement will be applicable to all civil aircraft products including aircraft of all sizes and types, engines and components, and to all WTO member countries. This was the principal objective of the U.S. aerospace industry, which produces the largest trade surplus of any U.S. manufacturing industry, an estimated \$28 billion in 1993.

We continue to seek to tighten the existing disciplines on government support for aircraft development, production and marketing currently contained in the 1979 GATT Agreement on Trade in Civil Aircraft and to expand the coverage of that agreement to other countries that produce civil aircraft. Those negotiations will continue with the goal of reaching agreement by the end of 1994.

ENVIRONMENT

Comprehensive as it is, the Final Act does not cover every several aspect of trade policy of great importance to the United States and to this Administration. Our trading partners recognize that the work of shaping the World Trade Organization to the needs of the 21st century must continue without pause.

In December, the Uruguay Round participants decided to develop a program of work on trade and environment to present to the ministers in Marrakech in April. We begin with the agreed premise that international trade can and should promote sustainable development, and that the world trading system should be responsive to the need for environmental protection, if necessary through modification of trade rules.

The United States will seek a work program that ensures that the new WTO is responsive to environmental concerns. International trade can contribute to our urgent national and international efforts to protect and enhance environmental quality and conserve and restore natural resources. At the same time, we will continue to advocate trade rules that do not hamper our efforts to carry out vital and effective environmental policies, whether nationally or in cooperation with other countries. We will be working closely with environmental organizations and business groups, as well as the various agencies, and of course this Committee and others in Congress, as we define our trade and environment objectives.

Conclusion

Mr. Chairman, it appears that Congress will be considering the Uruguay Round implementing legislation at an auspicious time for America. The U.S. economy is expanding; investment is increasing; jobs are being created; and optimism about the prospects for our economy is soaring. This economic expansion reflects the fact that this country is moving in the right direction; and we are doing it together. The policies of the Clinton Administration, starting with our budget plan; the

adjustments made over the last several years by our workers and companies-- all of our efforts make us as a nation stronger and more competitive.

In setting the negotiating objectives for the Uruguay Round, Congress clearly signalled its belief that strengthening the multilateral rules of the GATT would make America more competitive in world markets. We succeeded. We met those objectives; and I am convinced that the new multilateral rules agreed to in the Uruguay Round will work together with our ongoing efforts to increase regional cooperation. America is uniquely positioned to benefit from expanding trade-- in this hemisphere and in the world. The Uruguay Round builds on our strengths. It will benefit us, and the world economy as a whole.

Mr. GIBBONS [presiding]. Thank you, Mr. Ambassador. I want to say in opening that I think that you and your staff and your predecessors in office have done a marvelous job on this. As I see it, and I think most of the people in the United States see it, this is a good deal for America. It is a good deal for the international community and for the development of jobs in this country particularly. So I want to commend you for that and say that as chairman of the Trade Subcommittee we are anxious to work with you and begin to work on the technical matters that have to be done, the changes in the U.S. law, and to get these approved by the Congress as rapidly as possible.

I want to thank you for the work that your staff has already done with our staff in bringing this up and pledge to you here openly and publicly that we will continue this kind of cooperation and effort to get it done because it is good for us.

Now, I have some particular questions that I will submit in writing. I feel that my role is to kind of act as a communicator with the different sectors of the American economy and to present questions to you, and so if you can answer them as completely and as rapidly as possible, I would appreciate it.

I also want to ask you about the continuing negotiations that are going on now and have you reflect particularly upon market opening in Japan because there is still some work to be done in that area. Could you elaborate for us a little about what you see the problems are and what your position will be as far as market opening is concerned, worldwide but particularly focusing on Japan?

Ambassador KANTOR. As we address market opening in Japan, it really has two aspects. One is the framework talks we are in right now with Japan and the result of the agreement reached between then Prime Minister Miyazawa and President Clinton during the G-7 talks in July 1993, the first week of July. That is one level of talks that are going on right now.

The second level, of course, is our engaging the Japanese in discussion in very specific areas where we think the Japanese were not as forthcoming in the Uruguay round as the European Union, the United States, Canada, and other major trading partners or trading allies who are part of the World Trade Organization. One of these very specific areas is wood. We agreed with the European Union to go to zero tariff in wood over a 10-year period of time. The Japanese have agreed only to go to a 50 percent cut over the first 5 years, so we are negotiating with them over the second 5 years trying to get a commitment to go from the 50 percent cut to a 100 percent cut, of course, at the end of 10 years.

In terms of copper, we had made an agreement with the European Union to go to zero, again, over a 10-year period of time. The Japanese Government has taken a position that the cuts in non-ferrous metals generally were too small so therefore they wouldn't go to zero on copper until all the other areas were cut significantly. The logic of that escapes me to some degree, Mr. Chairman, but that is their position at the current time. We are hopeful they will go to zero on copper because it is in their interests as well as in the interests of the United States that that be done.

In the area of white spirits, leather, and shoes, those are areas which the Japanese Government has tremendous problems with in

a number of ways, both domestically and in terms of their foreign trade. We are working on all of those areas. Obviously, we have a much bigger interest in some than in others. Certainly the white spirits area is one that is a major potential market for U.S. producers but which because of tax policy as well as tariffs has not been as open as it should be to U.S. products.

We are also working with the Japanese to try to get them to open their financial services market, whether it is in pension fund management or in banking or in other areas. We did not reach agreement on the financial services agreement mainly because the Japanese and the Koreans were not willing to open their financial services market in a way that the European Union and the United States were willing to. That would have created what we called a free rider problem. We make an agreement we open our market, the Europeans open their market, but the Japanese don't open theirs.

Frankly, Mr. Chairman, we have had a little too much of that, a little too much of MFN and not enough of reciprocity, and so we have taken an MFN exemption. We said that if we still don't have enough good offers at the time that the Uruguay round goes into effect, we will lift the MFN exemption for the first 6 months only. We will make a decision after that whether or not we take an MFN exemption in the financial services sector, depending on what especially the Japanese and the Koreans do in this area. So those are specifically where we are in the negotiations with the Japanese Government at this point.

Mr. GIBBONS. Well, let me say I recently visited Europe and talked to some of the leaders over there. I think that they feel that this is a good arrangement, too. They don't seem to anticipate any problems in the ratification of it and the implementation of it. I visited Morocco where they are excited about hosting the signing ceremony and our embassy there is excited, too, because they realize how inadequate the facilities are and how many people are going to be attending those signing ceremonies, so I hope—wish you good luck on all of that. It ought to be a very interesting thing.

At that signing ceremony I would imagine that there will be a lot of attention paid to what is the future negotiating plan for continuing the unfinished business and for plowing new ground in all of this. I look forward to working with you and discussing that. Because time is running out I won't ask you to go into all of that right now, but the 15th is an important date and you have got a lot of work to do between now and then.

Ambassador KANTOR. Thank you, Mr. Chairman.

Mr. GIBBONS. Mr. Archer.

Mr. ARCHER. Thank you, Mr. Chairman. Mr. Ambassador, we know there will be some critics of this agreement. No agreement of this kind is perfect, but on balance, as I mentioned earlier, I think it is an excellent step forward for the world and for this country. Some of the critics will likely oppose it on the grounds that once again it is construed in their minds to give up some degree of U.S. sovereignty and to transfer that to the World Trade Organization.

Will the United States be giving up any sovereignty?

Ambassador KANTOR. Mr. Archer, not any more than we had already given up, if that is the proper word—I almost hesitate to use that—in the GATT itself. Frankly, the rules in the Dunkel draft were unacceptable in terms of voting procedures in the what then was called the Multilateral Trade Organization. The United States thought World Trade Organization was a little more dignified and certainly fit our perspective better.

In that connection we have made sure that the organization would function only by consensus and that we could not be in effect outvoted; that the rules cannot change without the permission of the Congress of the United States or the people of the United States. This was preserved, as it is in GATT. That was critical, and that has been preserved. So No. 1, we have not lost any sovereignty through any change in the way in which the now World Trade Organization will work.

No. 2, as far as dispute settlement is concerned, although we take 301 cases to a new dispute settlement mechanism, we believe it is even more effective and helps our sovereignty and makes us stronger, not weaker. Let me explain that. To the degree we can assert our rights effectively, in a multilateral context, and make 301 even a more effective tool—because there is a set time limit, there is a right of appeal, there is no blockage, and we have cross-retaliation rights—we believe the world's largest, most open market, which is the United States, the world's most productive workers, which is the United States, the most competitive products, which is the United States, is well served by having this kind of effective dispute settlement mechanism, while retaining in those areas that aren't GATT-covered or in bilateral treaties the right to use our own trade mechanisms; so we believe our sovereignty is enhanced. We create jobs, we are made stronger by the advent of this new organization which is much stronger than the GATT, frankly, by bringing in services, by having intellectual property protection, by making agricultural rules so much stronger. I believe it is in the best interests of our country.

Mr. ARCHER. I have one last question. I think one of our problems as we move forward with the implementing legislation is to keep the bill free of innumerable extraneous trade proposals that are out there lying in waiting, just waiting for a legislative vehicle. Are you prepared to resist the efforts to rewrite large sections of the trade laws or create new extraneous programs that might receive an effort to be added to this implementing legislation?

Ambassador KANTOR. I was just thinking, Mr. Archer, thank God this is not my first hearing here. I think I have learned how to answer that question. I think I am prepared and this administration is prepared to work with both sides in terms of coming up with implementing legislation that is acceptable. Obviously there are going to be efforts on behalf of some persons, Republicans and Democrats, to make changes in trade laws as a result of having this vehicle available.

I think it would be unfortunate if I began to list what we would accept or not accept on today's facts. One, we don't know what is going to come up, and, two, we are not sure exactly what kind of consensus we could build around it, so I am going to follow what is, I guess, the rules of the game in Washington. I am going to

duck that question for now, work closely with you and the Chair and the Trade subcommittee and make sure that we come up with implementing legislation and a statement of administrative action that is not only widely supported in the Congress, but is in the best interests of the American people.

Mr. ARCHER. Thank you very much.

Mr. GIBBONS. Before I go to Mr. Matsui, let me say I appreciate the fact that we have shipped to you hundreds and hundreds of special bills that have been introduced here in the Congress to change our trade laws and asked you to pay particular attention to them to try to negotiate them out in the remainder of this round. It would help the workload in Congress if you all could get rid of those bills for us. We haven't—they are very difficult and they are very intricate and a lot of them are better negotiated away than us trying to legislate in that manner, so I appreciate what you all are doing to try to get rid of those for us.

Mr. Matsui, then Mrs. Kennelly.

Mr. MATSUI. Thank you, Mr. Chairman.

Mr. Ambassador, I would like to really commend you for the job you did in Geneva. When the delegation that Mr. Rostenkowski and Mr. Gibbons put together left Geneva, I guess it was on Saturday, we were all under the impression that the GATT was not going to come together, and, of course, by Wednesday you had it put together. And although you were mentioning in your opening statement some of the areas where you were not totally successful, I would have to say that the proposed GATT is a major achievement, and I think as Chairmen Rostenkowski and Gibbons have both said, this will undoubtedly help the U.S. economy and the world economy, so we all want to thank you very much for your efforts.

I would like to also quickly mention one thing that is unrelated because Mr. Gibbons raised it, and that is the framework discussion going on now with the Japanese. You briefed a number of the Members yesterday afternoon, and I would just like to make one observation. You need not comment on it, but the Japanese undoubtedly and some U.S. commentators as well over the next few weeks, will be saying that, because of the instability in the current Japanese Government, we should not push them. I would really take issue with that observation or that conclusion because the government, whether it is the LDP or the coalition government, is really irrelevant.

The Japanese Government is really the bureaucrats—they are the ones controlling this issue—and even if the current government was stable, it is my belief that we would still be having this problem and the Japanese would have another reason or rationale as to why they could not move forward, and so I commend you for the position that you have taken. I think we have to be very, very tough because this is the first time that this new administration will have an opportunity to really confront this issue. And if we miss it this time, as you observed yesterday, we may not have another opportunity. I think it is very important that the Japanese know that you have the support of the Ways and Means Committee and also the Members both on the Democratic and Republican side of the aisle in the House, and probably in the Senate as well.

If I may now raise some issues regarding the GATT, one is the issue of timing. It is my understanding that on the Senate side there is some ambivalence toward taking this up, given the fact that this doesn't take effect until mid-1995. I think that analysis is somewhat irrational, that thought, because it looks like we can move this legislation quickly. We ought to move it quickly just to let the world know that we are committed to free trade and market-opening provisions, such as those you have in this agreement.

What is the administration's preferred timing on this legislation?

Ambassador KANTOR. We believe it would be important to achieve ratification in a reasonable time. I am going to meet with the Senate Finance Committee in executive session later this week, tomorrow, and discuss this among other issues. Let me indicate that because of the fact that these agreements will have ultimately a big economic effect—McGraw Hill DRI believes it will add \$1,700 a year to the income of a median income family in this country—over a 10-year period of time, that is \$17,000—and will add \$1 trillion to our gross product over 10 years at a minimum—it is extremely important that we implement it. The agreement also has a psychological effect.

As our economy is growing, as we try to lead global growth, it is very helpful that we were able to, frankly, pass the North American Free Trade Agreement, have a successful APEC Conference and, of course, finish the Uruguay round to give people confidence that, in fact, we have a growing global economy, not a shrinking global economy. So, I would agree with your statement. We don't have an agreement worked out on timing, but we will work closely, obviously with this committee and the House as well as the Senate side.

Mr. MATSUI. It is important so people will be able to make decisions based on the passage of this legislation. If I may just conclude by raising one last issue, the whole issue of the audiovisual matter. For the first time I think we had a strong focus on the audiovisual issues, and it is beyond my comprehension how, why the French and now Spain and basically the European Union, why they are afraid of the free exchange of ideas. I guess that is their problem, not our problem. Maybe they don't trust their own citizens. But the fact of the matter is this issue has to be dealt with. It is a \$4-plus-billion export industry for the United States and it is growing rapidly.

Just last December after you completed the agreement, Spain put additional restrictions on movies and now the French have extended their draconian restrictions on music. How can we be of help in the implementing legislation? I think we should take some significant action. I don't think they are going to move until we take action, and unless you can persuade them in the meantime, but how can we be of help to move this process so we can open up the European market? I think this could be a bad precedent for other countries unless we are forceful in this particular area in the next 4 or 5 months.

Ambassador KANTOR. It is potentially very dangerous. Let me first associate myself and this administration with your remarks, Mr. Matsui. Let me thank you, by the way, for your kind remarks in your opening statement on behalf of this entire team, this nego-

tiating team. There is nothing more pernicious than trying to tell people what to watch and what to hear. Nothing is more devastating to our entertainment industry—which is dominant, frankly, in the world, which has a major trade surplus, as you know—than this growing, I think, trade cancer that in the guise of cultural protection, of cultural heritage or they call it cultural specificity, imposes protectionist measures which would lock out our films, our television programming and our music. That is one part of this so-called broadcast directive.

The second is just as pernicious. The fact that American artists and producers who should have the right to royalties which are collected in Europe as a result of the sale of blank tapes and VCRs are not allowed to collect those royalties is just stunning to anyone, I think, sitting on that side or certainly on this side. I think the President made the right decision when he told me don't accept an agreement that recognizes that practice. To accept such an agreement, a compromise, would mean we had, in fact, said it is fine to do it; we are not talking about what you do, we are just talking about how far you go.

I think we have to stand up against it as a country. It has both commercial effects, but it also has—it really has—an effect on American values, and I believe we ought to, as one, as a Congress and as an administration, work together in a bipartisan basis to find a method that will be effective to open up that European market and to get rid of that aspect of the so-called broadcast directive.

Mr. MATSUI. Thank you. I look forward to working with you.

Chairman ROSTENKOWSKI [presiding]. Mrs. Kennelly.

Mrs. KENNELLY. Thank you, Mr. Chairman, and Ambassador Kantor. I am so glad to be back on the same side with you.

Ambassador KANTOR. So am I.

Mrs. KENNELLY. But please take my expression of the work you did on the GATT, it was phenomenal, and I congratulate you on that.

Ambassador KANTOR. Thank you.

Mrs. KENNELLY. Mr. Chairman, I would ask permission to put a statement on the record.

Chairman ROSTENKOWSKI. Without objection.

[The information follows:]

STATEMENT OF THE HONORABLE BARBARA B. KENNELLY
COMMITTEE ON WAYS AND MEANS
JANUARY 26, 1994
URUGUAY ROUND AGREEMENT

Mr. Chairman. And welcome Mr. Ambassador. I would like to make a brief statement. As we are all well aware, this country faces many new challenges. Connecticut and the New England region have experienced the recession with an acute awareness that fundamental changes need to be made for our region to survive economically. We have experienced defense downsizing and the breakdown of our financial and real estate industries just to name a few and yet the most painful. Many people know of Connecticut as a small state in the Northeast. Many people do not realize we are a very active state in manufacturing of high processed and highly technical goods and machinery. As a result of high wage high skilled jobs, we are a very productive export state. In fact exports have surpassed defense in percentage of our overall gross state product.

Connecticut's international trade role is growing. State exports sales have been on the rise for the past 5 years. Exports are particularly significant to our chemicals, instrumentation, jet engine, and electrical/electronic production.

In a changing state and national economy, exports are becoming increasingly more important to our state's economic health. Agreements reached at the Uruguay Round of talks will benefit Connecticut export industries - small, medium and large. After seven years of discussion, I am pleased a conclusion, reached with the support of 118 participants, was finally accomplished. This has been a lengthy process for you and your colleagues - one again of inheritance. This agreement will improve the prospect for market opportunities and growth for many Connecticut industries. I am of the understanding that not all the objectives of our negotiators were reached in every sector. I am hopeful that discussions on several of these outstanding issues can be resolved by the appropriate deadlines or in the near future. I look forward to discussing these with you and your staff.

Mrs. KENNELLY. Mr. Ambassador, I heard your answer to Mr. Archer's question about specific industries, and I know exactly why you don't want to get into the detail here today, but for some of us who are interested, I would like to submit some questions to your staff on the distilled spirits and on the insurance industry. Even though we can't address every issue now, we still have to later, so I hope I can get together with some members of your staff on those questions. But there is one area that I still think, Mr. Ambassador, is open to discussion, and questions can and must be asked. I refer to the research and development area in aerospace.

The President has made research and development a cornerstone of his economic policy, and yet when we look at the aerospace industry, Europeans have put billions of dollars into subsidies in aerospace. I wrote down some of your comments on this, and you say the bilateral agreement is still in place. You say everything is on go, and you are satisfied, but could you just expand a little bit more on research and development and how we can level that playingfield and indirect subsidies? Could you address those for us so that we will know where exactly we are in this whole area because I know the industry has questions?

Ambassador KANTOR. Let me take both sides of that. Of course, you have a legitimate and very vital interest because of your district and of the effect of the aircraft agreement on it, but we all do, frankly. As I said, the aerospace industry provides a \$28 billion trade surplus. Let me first take the research area. We made substantial changes in the so-called subsidies text in order to make sure that we could have government-private partnerships for fundamental, basic and applied research; in order that we can do things as we did with SEMATECH, which was one of the reasons our semiconductor industry made such a wonderful comeback in the late 1980s and early 1990s and now dominates, dominates the world market in semiconductors; in order that we can have the government appropriately involved in a way that would put us in a competitive position, if not better than a competitive position in the world as we develop new technologies. And certainly aerospace is one of those areas. For fundamental research, the government can put in 100 percent—it is not countervailable. In basic research the government can put in up to 75 percent that is not countervailable, and in applied research through the prototype stage up to 50 percent.

We raised the percentages to such a level—fundamental research 100 percent—that, in fact, allows great freedom to this government to work appropriately with our industry in a partnership to develop new technologies. That is No. 1.

No. 2, what we did in terms of subsidies is make sure beyond the prototype stage that we disciplined subsidies for production, marketing, and other matters. That is where the Airbus situation has been so difficult, frankly, for this country. The European Union did not want to put aircraft under the Subsidies Code because of the 5 percent ad valorem rule which limits subsidies in the areas of production and marketing and so on to that. They wanted either to be taken completely out and grandfathered or they wanted a new text, the so-called Chairman's text.

We were able to keep them not only in the code but keep our bilateral agreement on Airbus in effect, which means our aerospace industry is protected from the European Community going any further than they have gone in terms of subsidizing Airbus—in terms of raising the percentage—it doesn't mean the problem is completely solved, but we made a major step in trying to solve the problem in order that our industry remain competitive.

As you know, Airbus has taken about 33 to 35 percent of the market, and we have been hurt, certain aerospace companies have been hurt very badly, by that. We believe we made great strides. I think the support of the aerospace industry unanimously for this agreement indicates that we made strides in this agreement.

Mrs. KENNELLY. Thank you, Mr. Ambassador. As you know and I know, there is much more work to be done and Airbus is not the only issue. There are other issues that have to be worked on, and I thank you and I look forward to working with you.

[The following was subsequently received:]

Question from Barbara Kennelly

Question #1

Under the institutional umbrella of the world Trade Organization, it is my understanding that negotiators have agreed to develop a work program on trade and the environment.

Would you explain the purpose and agenda for such a program?

Answer:

Largely in response to U.S. insistence that environmental issues be addressed by the new institution, the Trade Negotiations Committee issued a Decision on Trade and Environment (attached) in the final stage of the Uruguay Round negotiations. The Decision identifies key objectives for a WTO program of work, and calls for presentation of a work program together with "recommendations on an institutional structure for its execution, as soon as possible and no later than at the Ministerial Conference of April 1994."

The U.S. would like to see that a standing committee on trade and environment is established, with a specific timetable for action on a work program.

We have been working closely with both the environmental and the business communities on the possible areas of work for this Committee. We would like to ensure that the work program is one that will be supported by both developing and developed countries, and that it is strong and flexible. Our goal is a program that follows on the directives expressed in the TNC Decision, strengthens the responsiveness of the trading system to environmental concerns, and makes its procedures more accessible to the general public.

Question from Barbara Kennelly

Question #2

During the debate on NAFTA, concern for the environment and the rights of workers affected by international trade became significant points of controversy.

How does the Administration answer the criticism of the environmental community that the GATT insufficiently addresses their concerns?

Answer:

We believe that the Uruguay Round marks a good start in addressing the environmental community's concerns, but much remains to be done.

The Uruguay Round Final Act contains two Agreements that relate to product standards: the Agreement on the Application of Sanitary and Phytosanitary [SPS] Measures, and the Agreement on Technical Barriers to Trade [TBT]. The "SPS" agreement governs measures to protect human, animal, or plant life or health against animal and plant pests and diseases and contaminants in food and feeds. The "TBT" agreement governs a wide range of technical standards and regulations adopted to protect life or health, the environment, or consumers. This basic approach to product standards is similar to the NAFTA.

Although the language of the Uruguay Round Final Act differs from the NAFTA language in many places, the Final Act provisions with respect to product standards recognize that each country may determine the level of health, safety, and environmental protection that it deems appropriate, and that a country may adopt appropriate standards or other measures to achieve its chosen level of protection, including standards or measures more stringent than comparable international standards. The Final Act also contains language that makes it clear that international efforts to harmonize standards will not require any country to lower the level of protection that it considers appropriate.

In these important respects, the Uruguay Round Final Act safeguards U.S. environmental, health, and safety standards much the same as the parallel provisions in the NAFTA. While the Administration frankly prefers the clearer and more direct language of the NAFTA on these points, we are confident that the Uruguay Round Final Act text affords similar protection from trade challenges for U.S. measures.

We were successful in obtaining an important reference to sustainable development and protection of the environment in the preamble--not unlike the NAFTA preamble. We were also able to

increase public access to country positions in dispute settlement proceedings beyond what was possible in the NAFTA.

Other issues, such as the relationship of the GATT to international environmental agreements, we expect to take up during future GATT or WTO work on trade and environment issues. At the conclusion of the Uruguay Round negotiations, the GATT parties formally agreed to develop a work program on trade and environment for presentation at the meeting of ministers to sign the Final Act in Marrakech on April 15, 1994. USTR and other Administration officials have consulted with nongovernmental organizations and the business community on our broader agenda with respect to trade and environment. We are now in the process of discussing that future work program informally with other countries.

Question from Barbara Kennelly

Question #3&4

With regard to the insurance sector, it is my understanding that no specific market access commitments were reached in the Round but that further negotiations take place.

Q. How soon do you expect those negotiations to begin?

Q. What are your objectives for these discussions?

Q. What do you envision for the prospects of success in this sector?

Answer:

A large number of countries made commitments to market access and national treatment in the insurance sector. Many of these commitments, such as those from the European Union, were very satisfactory. However, because some important countries failed to make sufficient commitments in these sectors, it was agreed to extend the negotiating process. This allows any country the right to invoke an exemption to Most-Favored-Nation, on a six month suspended basis, on the date the agreement enters into force. During that time, the most intensive negotiating efforts are likely to take place.

Parties are free at any time to commence negotiations. Our intention is to reconvene the negotiations on a bilateral basis, visiting capitals where necessary. We want to work directly with Finance officials responsible for insurance regulation.

Our objective is to obtain substantial improvements in the levels of market access and national treatment from these critical countries so that a meaningful threshold of liberalization will be achieved through these extended negotiations. While it is too early to predict their outcome, we are hopeful that planned insurance reform in countries such as Korea, India, and possibly Brazil, will make a difference in the final commitments of these countries.

Question from Barbara Kennelly

Question #5

In a general sense, my question concerns China's membership in the GATT. It is my understanding that progress is being made on this front, I would like to know what remains to be done/what conditions need to be met in terms of China's accession into the GATT.

Answer:

The United States has agreed to "staunchly support" China's participation in the GATT. This pledge was made at the time of our MOU agreement. China's accession offers a good opportunity to assure that the reform of China's trade regime is consistent with the GATT and its successor agreement, the World Trade Organization. We are continuing our bilateral contacts with the Chinese on the terms and conditions of their participation in the GATT/WTO, including the provision of schedules of concessions in goods and services and adherence to the new disciplines in agriculture which must also be contained in China's schedule. In addition, the GATT working party will continue its meetings on all aspects of the accession, which now must address the adherence to the WTO provisions.

Question from Barbara Kennelly and Sam Gibbons:

Question #6

The market access agreement reached in December includes tariff elimination for distilled spirits. However, this agreement is limited to whiskey and brandy. It does not cover other distilled spirits, such as vodka, rum, gin and liqueurs, which represent a significant portion of U.S. exports. I understand that only Japan has objected to eliminating tariffs on these products, while all other participants in the distilled spirits "zero for zero" are prepared to do so.

Do you intend to continue to press Japan to agree to eliminate its tariffs on these products, so that all U.S. exports of distilled spirits can benefit from tariff elimination in major markets around the world?

Answer:

We are continuing to press Japan at all levels of government to improve its offer on white spirits. Several senior level officials have visited Tokyo recently and, earlier this week, senior Administration officials met bilaterally and quadrilaterally with Japan in Geneva to press this issue.

Question from Barbara Kennelly and Sam Gibbons

Question #7

Will the United States support the EC's efforts to seek Japan's compliance with the GATT panel report on its discriminatory system of liquor taxation?

Will the United States pursue the resolution of this issue under the U.S.-Japan framework agreement.

Answer:

With respect to the first question, yes, we will support the EC. With respect to the second question, thus far this issue has been pursued outside the formal framework negotiations.

Question from Barbara Kennelly

Question #8

Do you expect foreign governments to agree to reduce direct support for their aerospace industries?

Answer:

The 1992 Bilateral agreement between the U.S. and the EU limits direct support by the Airbus partner governments to no more than 33 percent of the total cost of the development of a new large civil aircraft program. This represented a marked reduction of support that had averaged at least 75 percent prior to that date. In last December's negotiations of proposed revisions to the 1979 GATT Agreement on Trade in Civil Aircraft, the EU was unwilling at that time to agree to further reductions in that limit. Before those negotiations were suspended, however, participants, other than the EU and the U.S. seemed agreeable to an alternative approach that was based on limiting the subsidy element connected with government support rather than setting a limit on the proportion of government support.

Question from Barbara Kennelly

Question #9

It is my understanding that USTR negotiators stated that they were willing to negotiate with the Europeans on civil aircraft, but that they (the EU) have to put a better offer on the table than our current status under the new Subsidies Code. What demands, in addition, do you plan to make before we agree to go back to the bargaining table?

Answer:

With respect to the new Agreement on Subsidies, we are reasonably satisfied with the outcome, in that civil aircraft, engines and components are subject to the same stronger disciplines on export and domestic subsidies as are all other products, with relatively minor adjustments. Bringing civil aircraft under these new Subsidies Code disciplines was the major UR objective of the US aerospace industry. The new Subsidies Code will give us a much better tool to ensure that the positive contribution of the U.S. aerospace industry to our trade performance and overall economy is defended against possible unfair trade practices.

The EU had resisted the inclusion of aircraft in the Subsidies Code and sought special rules for aircraft in a revised Aircraft Agreement. The U.S. rejected pressure to hastily conclude negotiations on a revised GATT Aircraft Agreement within the December 15 deadline, because we had serious problems with the text under discussion; in particular, we were concerned about proposals to "grandfather", or exempt, past Airbus subsidies from GATT challenge and certain provisions which might have provided a pretext for unjustified GATT actions against our military and aerospace research programs.

We have agreed with the EU to continue for another year negotiations to revise and improve the 1979 GATT Aircraft Agreement. This reflects the longer term U.S. interest in achieving even stronger multilateral rules on trade in aircraft which we will insist upon in those negotiations; however, we have laid down no preconditions for returning to the negotiating table.

Ambassador KANTOR. Thank you very much, Mrs. Kennelly.

Chairman ROSTENKOWSKI. Mr. Crane will inquire.

Mr. CRANE. Thank you, Mr. Chairman. Congratulations, Mr. Ambassador. How does the administration plan to address the major issues left unresolved such as financial services and shipping, telecom, audiovisual?

Ambassador KANTOR. I think you have to take each as a separate item because each may be susceptible to different solutions. Take steel, it is susceptible to a multilateral steel agreement which would resolve finally the subsidization in Europe and the concerns the Europeans have had about dumping cases here in this country. This would, one, keep our industry competitive, but No. 2, make sure these fights don't continue over the next few years. That is on a multilateral basis.

On audiovisual, as I was discussing with Mr. Matsui, I think that is going to have to be done on a bilateral basis. I don't think we can do it on a multilateral basis because the interests are so divergent around the world it is just not susceptible, I believe, to that kind of agreement. On shipping we are engaged in discussions right now on a multilateral basis.

On financial services as I referred to earlier, we are going to have to engage the Japanese and the Koreans among others in order to open up their markets so that we do not have a so-called free rider problem as we address that issue. So in each of the cases it may be a little bit different approach. However, in most cases we are looking to a multilateral formula, telecommunications being one as well.

Frankly, given the competitive situation we are in in the United States in almost every one of these areas—we are in good shape now economically—we ought to look for good strong agreements, not just any agreements in these areas.

Mr. CRANE. What kind of fast track authority are you going to seek to get for implementation of any bilaterals?

Ambassador KANTOR. We would like to work closely with the Congress on that. We have not made a decision in the administration at this time whether to seek it and to what extent and how broadly. Frankly, as we use a building block approach in Latin America in order to gain more and more access to those growing markets, the second fastest growing economic region in the world, as we look at possible accession to NAFTA by certain countries who will be prepared to do so, as we look at trying to extend bilateral investment treaties or intellectual property rights treaties and so on to the rest of the world, we are going to be looking to making a decision in the administration and look to the Congress to work with you in terms of that kind of authority. Frankly, it is critical for negotiators for the United States to have fast track authority if we are going to reach the kind of agreements that the Congress has to ratify because it is almost impossible to reach an agreement with a third party if it has to come to the Congress and they believe it is going to be renegotiated, with all due respect, here, as you know. So we will be discussing it obviously with both sides and with this committee especially as we try to reach a conclusion on that matter.

Mr. CRANE. And, finally, how much is the implementing legislation going to cost? And how does the administration propose paying for it?

Ambassador KANTOR. Well, we are in discussions on that right now. This came up, as you know, during the North American Free Trade Agreement.

First of all, if we didn't have a static budget concept, I think everyone here would agree, certainly economists agree, that because of the tariff cuts and because of the increase in exports, because of the growing jobs here, the Federal Treasury would gain many, many more dollars than it will lose in terms of the tariff cuts.

The tariff cuts are about \$11 billion over 5 years. But the increase in economic activity will result in Federal revenues of much greater than that. However, given the PAY-GO system, we can't count that in terms of trying to make sure this is paid for under the rules. We are trying to determine now how to address that question.

We would like to work with you closely. We have discussed it with the Chairman. There are a number of different avenues we think we can proceed with; but, frankly, it is frustrating in trade agreements to continue to try to reach good, solid agreements which are in the best interests of the country, which we know will grow our economy, which will create more Federal revenues. And you can't count them in terms of paying for what you lose in tariff cuts. Tariff cuts are in our interest as a country, yet we are continually penalized for reaching agreements that result in those being cut.

Mr. CRANE. Have you considered any changes in the budget rules to give trade agreements more favorable treatment?

Ambassador KANTOR. I haven't. I think Mr. Panetta would consider such. I don't know what they would be. It is certainly beyond my competence and not in my portfolio; but I think when we look at trade agreements, I am convinced, after a year in this job, they ought to be treated differently.

Mr. CRANE. Thank you, Mr. Ambassador.

Chairman ROSTENKOWSKI. I might interject, if my colleague from Illinois has some suggestions on changing some of the budget rules with respect to trying to help funding of the GATT, I would be glad to hear them.

Mr. Ambassador, I know that that is sensitive; but, then again, on every issue that comes before this committee, the bottom line is what is it going to cost, how are we going to pay for it.

We are making—naturally we are making estimates on what implementing the GATT will cost. And right now, my preliminary estimates are around \$6.5 million. That is big bucks, particularly when you haven't got them.

I understand, you know, the inequities because of really raising revenues in the future from the implementation of this. But that is what we are saddled with here. And so I hope that we can continue to work out some understanding with respect to how this will be funded. Because that is going to be on the floor of the House of Representatives, the bottom line that the Members are going to make a decision about.

Ambassador KANTOR. We are proceeding to try to determine ways to pay for this, if that is a joint, mutual decision between the administration and the Congress, that we follow the same pattern as we did in the NAFTA, with the idea it will not result in any taxes or any fees on the American people. I think that would be unfortunate.

Frankly, we are giving the American people a tax cut by lowering tariffs, which is important to them and important to our economy. What we shouldn't do is take out of one pocket and put it in the other. And I know Director Panetta is working very hard trying to find ways in which we can pay for this without doing so.

Chairman ROSTENKOWSKI. Well, Mr. Ambassador, I am not going to argue with anybody here. I just know that the appetite in authorizing things diminishes when it is coupled with you have got to pay for it as well. We found that out.

Mr. CRANE. Will you yield, Mr. Chairman, for just 1 second?

It is called dynamic analysis and that will result.

Chairman ROSTENKOWSKI. Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman.

Welcome, Mr. Ambassador. It seems to me there are three basic questions. One of them has just been touched on, how we pay for it. The other two I think are as follows:

First of all, is this agreement, the GATT, worth supporting? And I think you have answered it for me. The answer is the same as yours. The answer is, yes. Clearly the text that came out was a major improvement over the Dunkel text. It is far from perfect, it has been said; but it is far from the imperfect document that essentially you started with. An example, zero tariffs that you have described today and the antidumping text, are just two.

And I join in congratulating you and all of the people who worked on it. There was major progress from where you started, though there is a considerable ways to go, as you acknowledge.

The other question, it seems to me, is: Are there some—can some of the softer spots—you can call them imperfections, not reaching our goal, whatever—can they be improved or clarified in the implementation bill?

And we haven't spent a lot of time on that today. Much of that discussion is ahead of us—for example, market access—and it is not clear how we proceed with that. Audiovisual has been discussed. Is there a way in the implementation language to improve, to clarify, however one wants to frame it, what is in the text?

And the third relates to section 301 as we have discussed. Clearly there is now going to be a stronger international multilateral set of remedies, the dispute settlement procedure.

The question becomes what is the effect on our own laws and their implementation? We have discussed the section 301 aspect, and I think we will need to leave it for our further discussions in the implementation language. But this is one of the issues I think we have to face.

When you have a stronger multilateral regime, what happens to 301 where there is no GATT provision, as for example in the anti-competitive practices issues that are now being vigorously pursued to the credit of this administration in the discussions with Japan. I think the problem is that while there is no GATT regimen that

relates to these anticompetitive practices, a lot of the remedies that we might contemplate—and I just underline contemplate, not necessarily use—tariffs or quotas would arguably be GATT illegal. And that means if we use them we are automatically subject to retaliation through the GATT.

Well, we have discussed that, and I think what we want to do is to work together to see how the implementation language might address market access, audiovisual, and the question of section 301 and other laws.

We want to be sure of the impact on our antidumping laws, too. So much progress was made by you in the text.

And, I just want to indicate how I think there is a sense of pride in this committee in being able to work with the administration in Geneva to help, for example, in the antidumping area.

You were the ones who had your necks out and had to wring out the agreement. It was our privilege on a bipartisan basis to put aside some of our differences and unite behind your efforts. And I think the results speak for themselves. Anyway, congratulations. And we look forward to working with you on the implementation bill.

Ambassador KANTOR. Thank you, Mr. Levin. I appreciate, first, your kind remarks.

Second, all of you contributed personally to those efforts in Geneva, as well as leading up to Geneva.

And, third, we do look forward to working with you and all the members of the committee. It is critical that we address the problems that you articulate. And I think this is one where there is no partisanship or ideology involved. This is a matter of keeping American businesses competitive and growing jobs in our country. And on that subject we have no differences at all.

Mr. LEVIN. Thank you.

Mr. GIBBONS [presiding]. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Mr. Ambassador, I too would like to congratulate you and your staff, negotiating staff, for what you accomplished in concluding the GATT round. I was a member of the delegation in Geneva as well and got a firsthand look at what it is that you were trying to accomplish.

What you accomplished was an extremely important feat, and we are all appreciative of how successful you were. I want to commend you and particularly your chief textile negotiator, Jennifer Hillman, for work done not in conjunction with the GATT but work done in conjunction with the transshipment issue as it relates to China.

You recently brought that to a successful conclusion, and I think it is important for our people here to know that we are trading on a fair basis so that our textile jobs continue to be protected as they should be from unfair foreign competition. But, as well, it sends a signal to all our trading partners around the world that we are no longer willing to tolerate people who are not going to play by the rules. And I think that was very important, and I appreciate that very, very much.

The GATT round, as it relates to textiles, contains both good and bad news. You certainly talked about that already. Much good work in terms of textile and apparel tariffs. Given where we start-

ed in January 1993, the conclusion was extraordinary; and the textile industry is very appreciative of the fact that we ended up where we did.

By the same token, it was our understanding that, as we phased out the multifiber agreement, we would have corresponding market access. In many instances, that has already been accomplished. But in terms of a substantial amount of market opportunity for our textile industry, such as in India and Pakistan and Thailand, Indonesia, et cetera, we have yet to gain the kind of market access that we need in order to justify giving them greater access to our markets. India last year sold us over 1 billion dollars' worth of textile and apparel goods, and we sold them nothing. Yet they have a middle class. They have 175 million people who want and can buy our goods.

And we need to ensure before this round is closed that we gain access to those markets so that we can trade fairly and equitably. Or we need to make certain that they don't gain any further access to our markets.

If you would just comment on where we stand, perhaps on that issue, with these four nations or any other matters related to that, I would appreciate it very much.

Ambassador KANTOR. Thank you very much, Mr. Payne. Thank you for your help in Geneva. Let me apologize for all the pizza boxes that were stacked end on end in that office we occupied there. But that is all we had for sustenance for a few days.

The fact is that we did reach a good agreement with China because of the good work of Ambassador Hillman. We have disciplined the practice in China of circumventing our laws and transshipping apparels and textiles. We have lowered dramatically the growth of shipments of Chinese apparels and textiles into this country, as well as silk apparel for the first time.

So Ambassador Hillman deserves a great deal of credit for that agreement.

It also indicates of course that when you are willing to take action, as this President was, and cut their textile quotas, it tends to get their attention and you tend to get the correct reaction.

On India, Pakistan, Indonesia, Thailand, in terms of market access and textiles, we will try up until and including the day that we finally sign the agreement to implement the World Trade Organization.

However, as you know, there is language in the text itself which provides that if we are not able to gain effective market access, we are able, then, to go against the quota rise they would otherwise be entitled to under the phaseout of the multifiber arrangement by using the dispute settlement mechanism. We sponsored that language, and it was put in there because we insisted that the phaseout of the multifiber arrangement be tied to some effective mechanism to make sure that if market access was not forthcoming, then countries would be denied, under the correct dispute settlement procedures, the right to have an increase in their quotas into this or other countries as well.

And so we think that is an effective tool to try to bring India, Pakistan, and others into agreement on market access. As you correctly point out, a number of countries already agreed to effective

market access for our apparel. We will continue to work on that. It is critical to us.

As you know, this administration has been very cognizant of how many people are employed in the textile and apparel industry, how critical it is to our country, how well this industry has done when it is allowed to compete on a fair basis around the world. And we will continue to work with you on that.

Mr. PAYNE. Thank you. And I look forward to working with you on that.

Mr. GIBBONS. Mrs. Johnson.

Mrs. JOHNSON. Thank you, Mr. Chairman.

Welcome, Mr. Ambassador. Congratulations to you and your very smart team on building on the work of your distinguished predecessor, never missing a beat, and for your really hardnosed commitment to the principles of market access and reciprocal fair treatment in the nontariff barrier areas.

I commend you on your accomplishments, and I think that this agreement is a tribute to the value of fast track authority. Without it, I don't believe for a moment you could have gotten the tough agreements you got on antidumping.

And I was part of that group that went over, and that was my primary concern. And you won most of the things we were concerned about. And I think if your negotiating partners had believed that we were going to renegotiate what you had got, you wouldn't have gotten the quality agreement that you got. And I hope that the Congress will give that a lot of careful thought.

I also commend you on resisting agreement in certain areas, where a sufficiently high quality agreement was not attainable. I think that is as important to, in a sense, the validity of fast track as winning good agreements.

I am pleased that you mentioned the aerospace industry and that in all of your work you and your team have acknowledged and been clearly conscious of the value of that industry to our national security and our economic strength. We are all aware that just in the last year exports in aerospace products and services fell by 10 percent or \$14 billion. That is lots of money and lots of jobs.

I would just like to ask you if you can commit that if multilateral talks are pursued in the next year revising the Aircraft Code discipline, that any U.S. position will be the result of thorough consultations with both the industry and Congress?

Ambassador KANTOR. Absolutely, I can assure you of that, as our consultations were thorough and complete with the industry and Congress both prior to Geneva and even during Geneva, as you know.

Mrs. JOHNSON. That is right. And while the problems are serious and in the sense the solution of Geneva is not a solution, we are going to have to really stand tight on a certain number of things if we are going to have the economic strength that we, in the future, have enjoyed in the past, in manufacturing as a whole and aerospace particularly.

Two other very brief questions. First of all, will the new rule of origin requirements still allow the stringent preferential rules, as were adopted in NAFTA, and particularly as other countries seek to join that agreement?

Ambassador KANTOR. Yes. The rule of origin agreement in NAFTA will be unchanged by the disciplines reached under the World Trade Organization agreement. Rules such as those under NAFTA were allowed for regional trade alliances.

Mrs. JOHNSON. Thank you.

And could you be more specific about the changes that will be required in our antidumping laws to implement this agreement?

Ambassador KANTOR. I would be happy to submit that for the record. They are very technical and, frankly, fairly minor.

Mrs. JOHNSON. I think it is important for those of us who have been particularly interested in that subject to be aware.

Ambassador KANTOR. In terms of cumulation or circumvention or standing or other things that we are most concerned about, we got what we wanted and that was most critical to our antidumping laws. But we would be glad to submit that for the record.

[The information follows:]

On March 1, 1994, USTR submitted a proposed list of the necessary and appropriate changes to existing U.S. antidumping and countervailing duty laws to the House Ways and Means Trade Subcommittee. These changes do not represent a net weakening of the U.S. antidumping law. The overall manner of conducting investigations and determining dumping under the new antidumping agreement largely conforms to current U.S. law and practice. The conversion of the rather general rules of the 1979 Antidumping Code to the explicit rules of the new agreement, however, necessitate some changes to U.S. law and practice. However, the changes required are relatively minor.

Mrs. JOHNSON. Thank you. I would appreciate that. And I do congratulate you on winning essentially all of the critical issues in that area.

Thank you, Mr. Ambassador. I look forward to working with you and your team on this. I think this agreement gives us an opportunity to build on not only the growing member knowledge of both the complexity of trade issues and their importance, but to build on the growing citizen awareness that trade agreements are absolutely essential to economic growth and to America enjoying a rising standard of living for each individual.

I look forward to using the deliberations of the next few months to achieve that goal. Thank you.

Ambassador KANTOR. Thank you, Mrs. Johnson, for all your help as well, individually as well as part of the committee.

Let me just say, when you know you have to come back and appear before this committee in the House on antidumping, it does focus your mind.

[The following was subsequently received:]

Question submitted by Representative Johnson: What is the Office of the U.S. Trade Representative doing to improve Uruguay round chemical offers from Brazil, Venezuela, Argentina, Indonesia, Thailand, and India?

Senior level officials are visiting or have visited Indonesia, Thailand, and India in the past several weeks to urge them to improve their chemical offers. We will follow up with demarches delivered by our Embassy.

We have called in Latin American government representatives to USTR to meet with representatives of the U.S. chemical industry who will explain the benefits of joining the chemical harmonization proposal.

Mr. GIBBONS. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

Ambassador Kantor, you have had a very productive year. Let me congratulate you for all the work you have done in many different areas to increase trade and to remove trade barriers.

I would like to focus if I might, on your comments in your written testimony, which deal with nonactionable subsidies. You indicate that, subject to specific criteria and limitations, there exist certain areas of nonactionable subsidies where government can subsidize for industrial research and development, regional development, and environmental protection.

I am curious as to your assessment of whether those provisions would be more favorable toward the United States or our trading partners. What has been the record as far as governmental subsidies in these areas and whether these provisions are to our advantage or disadvantage?

Ambassador KANTOR. I think you could argue that the provisions themselves, if they were left unrestricted and without caps on them—they do have caps, as you know, they have certain criteria—would be more in the interests of other nations than the interests of the United States.

I think that is a fair and, frankly, a candid statement.

On the other hand, regional development is limited, as you know, to assistance of the region itself and not to any particular industry. The problem has been, and with so-called regional development certainly in Europe certainly has been, the subsidy has gone to the steel industry in a particular region, and that is what has been so difficult in terms of our remaining competitive with other steelmakers in other countries, especially in Europe.

So that is No. 1. We believe limiting it to regional development and not to any particular industry is a critical factor that we were able to achieve.

Second, in terms of environment requirements, it is a one-time subsidy, if needed, to help a country or a particular to meet stronger regulations that would involve sustainable development. We believe that was important to do.

And, frankly, in both cases, let me be very candid, because of what we did, we were able to get major concessions in other areas.

These agreements are not done in a vacuum, and they are not done in a textbook way. As you know, there is give and take; and you have to make judgments as to what you will accept, what is acceptable to us economically, to get something that is critical.

Let me just say that as we negotiated these provisions, we were able to get tremendous protections in terms of compulsory licensing, especially for the semiconductor industry, for all industries; and that was a major importance to us. So, it is hard to look at it in a vacuum.

Mr. CARDIN. I can appreciate that. And my assessment would be similar. Subsidies, particularly in light of the U.S. budget problems, have probably been a little bit more prevalently used by other countries. We tend to do things by mandates in this country.

I am wondering whether the availability of border adjustments to try to equalize domestically manufactured products with imported products came up in your discussions. Perhaps some fairness standard could be used where domestic companies would have

to meet certain mandates that perhaps imported products could waive to avoid the cost.

We had similar discussions during the reconciliation energy debates, but I was wondering whether, as an alternative to dealing with direct government subsidies, whether there was any discussions in the GATT-Uruguay rounds concerning the legality of implementing border adjustments.

Ambassador KANTOR. We are attempting to adjust those in what we call "the next initiatives" in the GATT, the World Trade Organization, whether it is environmental requirements or labor standards or other areas where the United States has progressed quite far, where our companies meet very high standards and of course their costs associated with meeting those standards, which we all agree in some cases, could, as a result, make our companies less competitive.

We believe we have to move to a situation in which we have rules and regulations, as we did in the NAFTA, as you recall, with our labor and environmental side agreements, which, in fact, begin to harmonize up standards around the world, not only because in the environmental areas, for instance, we believe in sustainable development—we do; it is critical as we continue to grow this global economy—but also because it also keeps us competitive as a nation.

And so, yes, the answer is we are looking at this. The answer is the President has insisted on competition policy, environment, and labor standards being the next initiatives to be discussed in both the GATT and the World Trade Organization.

Mr. CARDIN. Thank you, Mr. Ambassador.

Mr. KOPETSKI. Before I recognize Mr. Kleczka, we do have a vote.

If Messrs. Herger and Grandy want to go vote, come back, I will go to Mr. Kleczka, myself; and by that time you should return, and we will hold the hearing open for your questions.

Does that sound like a good plan of action?

OK.

Mr. Kleczka may inquire.

Mr. KLECZKA. Thank you, Mr. Chairman.

Mr. Ambassador, environmental groups continue to raise concerns about the GATT, and although you do mention briefly, in your statement, some of the agreements with the environment, could you elaborate on two serious contentions: No. 1, that our environmental standards would be challenged or downgraded; and also the concern about the potential responsiveness of the World Trade Organization as a forum for environmental negotiations?

Ambassador KANTOR. Let me answer your first question directly. Each government remains free to adopt a sanitary or phytosanitary measure more stringent than the relevant international standard.

No. 2, as long as your environmental regulations are based on science, they are allowed under this agreement.

In both cases, of course, these would apply to our country favorably. And those contentions by some groups just are not correct.

Mr. KLECZKA. Because our country has higher standards, they would apply to products coming into our country?

Ambassador KANTOR. That is right.

Mr. KLECZKA. OK.

Ambassador KANTOR. We can maintain our higher standards, and they will not be affected adversely in any way.

In fact, there is a general move to harmonize up standards in the world, not the opposite.

No. 2, in terms of addressing environmental issues, we have a commitment on the part of the Director-General of the General Agreement on Tariffs and Trade that on April 15 in Marrakesh—why Marrakesh I still haven't figured out, but that is where we are going to be—that there will be a commitment to create a trade and environment committee for the first time as part of the GATT and then as the World Trade Organization.

That is a major step forward in trying to relate, as is proper, the environment to trade.

Mr. KLECZKA. OK. The importance of this group will be what; to negotiate these various trade or environmental concerns?

Ambassador KANTOR. It will be generally to ventilate these issues, to look at them in terms of how trade affects the environment, how we will be better able to harmonize up standards, and to look at all the issues that have been raised, that we frankly address in the North American Free Trade Agreement, in the side agreement.

It has now become recognized in trade circles that the environment is directly connected to trade and must be a part of trade agreements. And this is the way in which the United States insisted that it be taken up on a multilateral basis, that is the establishment of a trade and environment committee for the first time.

Mr. KLECZKA. And how will the disputes be resolved within this committee?

Ambassador KANTOR. Well, the dispute settlement mechanism, once this goes into effect. And of course the regulations or the text with regard to sanitary/phytosanitary standards and so on, is, frankly, not as broad or as encompassing as the United States would have wanted had we had a different situation and we were starting all over again in the Uruguay round negotiations.

Frankly, we have a ways to go in terms of the environment and trade and how we address that issue. We made great strides in the North American Free Trade Agreement. We hope that is a model, to some degree, of how we address it on a multilateral basis; but I will be honest with you to say that we are not there yet on a multilateral basis, and we have a ways to go.

Mr. KLECZKA [presiding]. Fine. Thank you very much.

Mr. Grandy will inquire.

Mr. GRANDY. Thanks, Mr. Chairman.

Mr. Ambassador, just two very quick questions. I appreciate your work on GATT but would like you to address a couple of questions that I think arise from, perhaps, confusion between some of your assessments of the future of the oilseed industry under GATT and their assessment of their future.

The oilseed industry is basically saying right now that under the present agreement, they predict that they will be forced to reduce exports by 81 percent over a 6-year period. You take a contrary position to that.

Could you clarify that, please?

Ambassador KANTOR. As does the Department of Agriculture, frankly, Mr. Grandy.

It is something that we will be glad to sit down with the industry and go over and see if we can't at least come to common figures, at least understand what the differences are in analysis.

Mr. GRANDY. Well, could you provide—because we don't have the time now—me with a breakdown of that as well? Because, obviously, I want to make sure that we are all singing out of the same hymnal here.

Ambassador KANTOR. Absolutely.

[The information follows:]

The commitments of the United States with regard to the export of subsidized vegetable oils are shown on the attached tables.

In the Uruguay Round, the United States was not required to make any commitments with respect to the export of any **unsubsidized** oilseed or oilseed product. We expect the United States to remain a very competitive supplier in world markets for oilseeds and products.

In addition, the United States will continue to administer foreign food assistance programs, of which vegetable oils are an important component.

Dec. 15, 1993

Table 7
Page 4

AGRICULTURAL NEGOTIATIONS: LIST OF COMMITMENTS

EXPORT COMPETITION: UNITED STATES OF AMERICA

Export Subsidies: Outlay and Quantity Reduction Commitments

Description of Products	Calendar/ Marketing Year Applied	Base Outlay Level (Supporting Table 11) (U.S. \$)	Base Quantity (Supporting Table 11) (MT)	Annual Outlay Commitment Levels (U.S. \$)		Annual Quantity Commitment Levels (MT)	
					5		6
VEGETABLE OILS	2		4				
	FY 1987-91	22,004,531.52	178,860				
	FY 1992/93	60,734,841.04	676,786	(1995)	52,959,517.56	(1995)	587,538
				(1996)	45,184,194.08	(1996)	498,290
				(1997)	37,408,870.61	(1997)	409,043
				(1998)	29,633,547.13	(1998)	319,795
				(1999)	21,858,223.65	(1999)	230,547
				(2000)	14,082,900.17	(2000)	141,299

Mr. GRANDY. But they are concerned that, under the Blair House agreements, that evidently there is an opportunity for France and perhaps Italy to continue national payments to oilseeds that would be in addition to their regular support payments.

Ambassador KANTOR. Let me give you a couple of quick examples. And I know we don't have a lot of time, and we will be glad to provide complete information both for the record and to you individually and to work with the industry.

One, under the text, they must reduce internal supports by 20 percent, as you know. The United States, because we reduced our supports from 1986 to 1990, we don't have to reduce at all.

Mr. GRANDY. I am aware of that.

Ambassador KANTOR. In terms of export subsidies, they must be reduced by 21 percent over the 6-year period of time, with a 9-year peace clause.

The fact is that we are helped by not only the Blair House agreement and the fact that there are these cuts but also by the adjustments we made because we will be able to export even more under the new adjusted Blair House agreement than we did before. But we will be glad to provide that for you. I think it may be a difference in interpretation or maybe we have not been as articulate or as helpful as we could be to the industry in terms of explaining what happened.

Mr. GRANDY. Well, the sooner you could clarify that, the sooner I think we could come to closure. One other point, and this regards something that is not under the jurisdiction of USTR or even this committee but something that is keenly felt back in Iowa, and that is the whole question of the commitment by this administration to the Export Enhancement Program, up to Final Agreement of GATT.

We are not talking about downsizing the Export Enhancement Program in anticipation of the GATT, are we?

Ambassador KANTOR. No, we are not. As you know, we have used it to great effect both in Mexico and China in wheat in just the last year alone.

Mr. GRANDY. Well, that is my point. It has been a very effective lever, I think, to bring some of these parties to the table; and I hope that we will continue to use it until such time as it is not necessary.

And I would like to get your assurance on that, if I could, because you have got a lot of, among other groups, pork producers in Iowa that just benefited mightily from an EEP sale to the former Russian Republics.

Ambassador KANTOR. I don't want to step on my colleague Secretary Espy's toes—it is his jurisdiction—but we, of course, talk a lot about this.

I can safely say that he is committed to that policy, as you are. Of course, there would be reductions as we go forward once the World Trade Organization comes into effect and Blair House is effective.

But I couldn't agree more with you on the effectiveness of the program, and I think this administration, under the President's leadership, has used it quite wisely.

Mr. GRANDY. Well, thank you. I would agree with you up to this point. But there have been some rumors that this program was going to be terminated prematurely, and I hope we can scuttle that.

Thank you, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. KOPETSKI [presiding]. Mr. Ambassador, welcome. History will record that by the end of the 20th century the United States and a good part of the world had learned from its errors made in an earlier part of the century.

Specifically, in the 1930s, the United States adopted a policy quite restrictive, quite restrictive protectionist trade barriers. Other nations followed. This trade war was one of the major underpinnings, in my belief, which led to World War II.

There were other major reasons and factors and forces and individuals which contributed to that great conflagration, but I believe that in 1993, history will state that we learned from the mistakes of the past.

I want to give credit to a process, a procedure adopted by Congress, which provided the mechanism for the great achievements made this past year in world trade policies under your leadership and, of course, the President's.

The process, of course, was the fast track process. This was much derided, massively opposed by many in this Nation and in the body. But the fact is that fast track process provided the procedural framework and impetus to achieve agreement on a couple of fronts. And let me be specific.

First, our own backyard, the North American continent. Passage of NAFTA without—would not have occurred without fast track authority, at least in our lifetime. Passage of NAFTA strengthened our hand, your hand, in the GATT negotiations. And the fast track expiration deadline placed a de facto deadline on the GATT negotiations.

And as you know in any negotiations, deadlines provide the impetus to we humans to come to closure. Process is critical, but so too are the individuals who use the process. Clearly the United States had the best and the brightest in charge. I commend you and Mr. Schmidt for your historic effort. Not only will the world have a fairer and more healthy economic playingfield, you are also peacemakers. For if people and nations are busy making money, it is my belief they are too busy to make war.

So I join with the rest of my colleagues in a bipartisan basis in commending you for your leadership, your abilities, and your willingness to be public servants for the United States of America.

Ambassador KANTOR. Thank you very much, Mr. Kopetski. It was very nice of you to say that. Thank you for not only your help but your leadership in not only the NAFTA but the GATT.

Let me just say that containment was a word that we used to great effect and, as a policy, in order to stop Soviet expansionism and the rise of communism during the cold war.

I think engagement is where we are now, and I think trade is right at the cutting edge of engagement with other nations. Literally, we have gone from mutual assured destruction to mutual

assured prosperity. And that is what this President is trying to achieve.

Your comments are exactly on point. We missed a tremendous opportunity after World War I, we didn't take responsibility. We did after World War II and built international mechanisms that, of course, were tremendously helpful in not only winning the cold war but building a global economy. Now we have this great challenge in the postcold war world to take trade, connect it to our domestic economic policy, grow jobs at home, and lead global growth abroad.

This President, with the help of, frankly, both sides of the aisle, is trying to do that; and I think we are making great progress. We have a long way to go, but from containment to engagement is where we need to go. And I think that is what you were referring to so articulately and well, and I appreciate your remarks and look forward to working with you on that.

Mr. KOPETSKI. I thank you. And I thank you for your philosophy and the great leadership that you have shown and continue to show.

I do want to join my colleague, Mr. Payne, in praising you also, and the administration, on your work on the textile agreement with the People's Republic of China. And as one who favors unconditional MFN for China, it is critical with our trade agreements, whether they are the Chinese or the Europeans or the Japanese or anyone else in this world, that we get tough and consistent in insisting on compliance with these trade agreements.

For too long, the United States did not exercise strong and consistent enforcement policies. I also want to underscore the importance specifically in the GATT issue that where we weren't successful, but appreciate the approach you took in saying that no agreement in the movie and recording issue is better than a bad agreement. There is a majority of this House that passed a resolution calling for full protection of the audiovisual industries in the GATT. I hope that the administration will use 301 bilateral negotiations, diplomatic channels and any other means to ensure that foreign markets are open to our films.

And then one other issue I want to underscore is the work in the forest products and paper products industry, important to the Northwest part of the United States where I come. It is still on the agenda, I hope. Curious to know briefly what the administration's strategy is. Would the President raise this, do you think, if necessary in his visits, if he goes to Japan? What will happen, I think, if we are not successful in the next few months?

Ambassador KANTOR. Well, as you know, we were able, after much teeth gnashing and hard work on the part of Ambassador Schmidt and others, to reach a zero tariff agreement with the European Union, reducing tariffs to zero in both of these areas.

Obviously, it was based upon the fact that the Quad—meaning Canada, Japan, the United States and the European Union—all agreed to reduce their tariffs to zero in certain areas. The Japanese have not agreed in the area of wood, and we are still working with them. I would say that our discussions with the Japanese in this and other areas in the last few weeks have not been as effective as we might have liked. We must open those markets in Japan, not only because it affects multilaterally what we can do in terms of

opening markets but because Japan is the second largest economy in the world next to the United States.

And so I would just indicate it is something we are focused on on a daily basis and will continue to work on with you and with others in order to try to make sure we are effective.

Mr. KOPETSKI. Well, I can speak for the entire Northwest delegation. This is very important to us with our wood products industry and any help that any of us on a bipartisan basis in the Northwest can be, we will be there right with you shoulder to shoulder.

Ambassador KANTOR. Thank you very much.

Mr. KOPETSKI. Thank you Mr. Ambassador.

I now call upon Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

And I want to ditto the remarks of my colleague just to the north of me. I represent that district in the northeastern part of California which has a great deal of timber in it, also a great deal of agriculture, as you know, Mr. Ambassador.

And I want to thank you for your work in the area of bringing down barriers. As you know, we grow a number of specialty crops: Peaches, walnuts, almonds, prunes, a number of others, a major producer in the world of those commodities, as well as a major producer of rice in our area. So what you are doing, there isn't anything I can think of that is more important.

Our big concern and my big concern and one of my major complaints, about both prior Republican as well as Democrat administrations, has been that we have not been tough enough with our trading partners, tough enough and just requiring them to be fair with us. Not tough in asking them any more than what we are giving them, but just reciprocity and the ability to have their markets open to us.

And of course this is what we are talking about today, what you have been involved in, and I want to commend you again for your work.

In this respect, if we can follow up on just the question of rice, we have seen, several of us on this committee, were over in Japan in August. I made it a great point to bring up rice at every juncture there. Rice, at that time, was a commodity that we weren't allowed any access. Now I am not so naive as to think it was our presence there at that time that all of a sudden we see their markets beginning to open up. I think the fact that they had a major drought there certainly helped that.

But I guess my question is, we have broken the ice. The Japanese—and I commend them for it—have allowed us to bring some rice into their country. Once this drought is over, how does this agreement affect us in ability to begin again, allowing us the same kind of access to their markets, whether it be rice or our other commodities that they have to ours?

Ambassador KANTOR. One of the most important aspects of this agreement is that we were able to reach agreement with Korea and Japan, not just Japan but Korea as well, to gain minimum access to their rice markets which were, of course, completely closed to our industry. It was not an easy decision for either the Japanese or the Koreans to make. As you know, it has serious implications both in terms of politics and the way their societies are organized.

The fact is that they were willing to take a political chance because of the hard work you and others have done, I think, the leadership of this President, and the great work done by the Secretary of Agriculture, Mike Espy.

This is not just a one-time thing. We have gained minimum access to their economy. It is going to grow very slowly. Let me not overstate the case. But it is more than just symbolic. It is a major step forward in our relations not only with Japan but—if you can open the rice market, then I think almost anything is possible there; and it gives us some confidence that our insistence that we have comparable action on the part of other countries in trade to what we do, will work as long as we are resolute and have the support of the Congress on a bipartisan basis; that we can literally level the playingfield. We are not there yet, but we made great strides.

Mr. HERGER. Well, again, I want to commend you. And we certainly thank the Japanese and others. We appreciate their markets; but again, it comes down to the fact that they have almost unlimited access to our markets. We have to be tough; we have to be far tougher than we have again in past administrations and other times on demanding what is just fair.

So I want to thank you to begin with, with your work and the great strides we have made in this area; but we still have a long way left to go, as you well know.

Ambassador KANTOR. Absolutely.

Mr. HERGER. Maybe in the—the other area we have a problem with is not just getting—securing access but also unfair subsidization that other countries have as far as gaining competitive access to third countries.

How are we coming in that respect?

Ambassador KANTOR. Well, especially in agriculture and in the subsidies agreement itself for goods, we were able to discipline subsidies in a way that hadn't been done before. The agreement disciplines subsidies much better in the goods area than the 1979 Subsidies Code, and certainly in agriculture, it is a new departure. Internal supports, as I said, will be reduced by 20 percent over 6 years, whereas we don't have to reduce our internal supports at all since we have reduced them from 1986 to 1990, and export subsidies must be reduced, as well, by 21 percent over 6 years.

So, therefore, we are going to gain. If you believe—as I know you do and I do and this President does and the Secretary of Agriculture does—that we are the most competitive agriculture industry in the world, the more we reduce internal supports and subsidies on a fair basis, multilaterally, the better off we are.

We—as the President said—we are going to compete, not retreat. And that is not just an empty phrase. The fact is, he believes the American people, given a fair chance, level playingfield, reducing these subsidies not only in goods but in agriculture, can do even a better job than we have done in the past. We are the largest trading nation in the world. People tend to forget that. We are the largest exporter and the largest importer. It is because the American people are so productive and so competitive. But the lack of a level playingfield, which grew up historically because of our con-

cern about building our allies' economies after the Second World War, has got to stop.

We have got to have a level playingfield; we have got to have comparable action on the part of other countries in terms of trade. That will be tremendously helpful to us, but also will be helpful to global growth as well.

Mr. KOPETSKI. The gentleman from New York, Mr. Houghton, may inquire.

Mr. HOUGHTON. Thank you very much.

Thank you, Mr. Ambassador. Good to see you here. Thanks for all you are doing. I remember the days when the USTR used to be sort of a stepchild in the Department of Commerce, and it is probably the most important job in the Cabinet today.

Dumping. I don't want to whip a dead horse. You have heard a lot about this. I know you are conscious of it. You know the opposition to the Dunkel language. It was not good. You tried to lighten that load. But still, in all, when you get to the bottom line, the dumping statutes of the United States, really under this agreement, have been weakened.

And an example of that, of course, is the sunset provision so that at the end of 5 years, unless there is a clear reason to think that there will be—and I don't know how you define that—a continuation of dumping, then everything stops. That is, in theory, a good idea; but, in practice, you know, there are a lot of companies that fought hard, put millions and millions of dollars into trying to prove their case. Dumping cases are very difficult to prove. And the thing that I worry about is now the burden of proof will be on them and they have to start this whole process all over again.

Look, you have got a lot to do today, and I am not going to hold you up; and I would like to write you further on this thing. But it is something which I think is an extremely important issue. The devil is in the details. It is something I think we ought to be very careful about, because the temptation to move into the most precious thing we have got, which is our market, is always going to be out there. Thank you.

Ambassador KANTOR. Let me just address that, and I will be glad to even extend this for the record.

In the sunset provision, we changed the language on burden of proof and persuasion. That is extremely important, as you recognize. We have done it in a way that we believe the burden is not on the U.S. industry but on the person or the country that, of course, had been violating our dumping laws. We changed the language during that last 5 days.

The burden is to show that the expiration of the duty, so to speak, would be likely to lead to continuation or recurrence of dumping and injury, so we believe that, in fact, the burden of proof has not shifted in this regard and, therefore, we are protected.

Mr. HOUGHTON. Well, I think it is a lot of interpretation in terms of "likely to lead." You know, that is a very broad area. I think the thing that—from a practical standpoint—I hate to see companies that have done the Lord's work and fought the good fight; and they are still in a very highly competitive international situation, where people could easily start dumping again, if the pressure is on them,

in their own economies, to have to start this fight all over again. It is very, very difficult to prove and highly expensive.

But I will get back in touch with you later. Thank you very much.

Ambassador KANTOR. Thank you, sir.

Mr. KOPETSKI. The gentleman from Louisiana, Mr. McCreery, may inquire.

Mr. McCRERY. Thank you, Mr. Chairman.

Mr. Kantor, congratulations on bringing to a conclusion the Uruguay round of talks on the GATT. It is a tremendous accomplishment, to be commended.

I also want to thank you for loaning to me Mr. Shapiro, allowing him to come to Shreveport, La., for my NAFTA exposition and seminar. He did an excellent job and helped me to convince some of the community leaders there that NAFTA was, in fact, a good deal for our country and for Louisiana.

I appreciate your response to Mr. Herger's question with respect to agriculture. And I just want to underscore the point that the 20 percent reduction required for internal farm supports from a 1986 to 1988 base, does not apply to the United States because we have already satisfied that with reductions in the 1985 farm bill and the 1990 farm bill. So our farming community doesn't have to worry about our internal farm supports being reduced as a result of this agreement.

I also want to just underscore Mr. Crane's suggestion that perhaps we explore changes in the budget rules to allow us to agree to these international trade arrangements without going to the PAY-GO requirements of the Budget Act. It doesn't make any sense to me that we have to raise taxes or cut spending to do something that is clearly in the best economic interests of this country.

As you have stated, your estimates are that we are going to add \$1 trillion to our GDP as a result of this agreement over the next 10 years, I think you said; and yet, because of some—I want to be careful with my words—but some previously passed budget arrangement here in the Congress, we have to raise taxes on the American people to pay for something that we are going to gain by. It just doesn't make sense.

So I want to encourage you not to just put it off on Mr. Panetta but go to Mr. Panetta and say, look, this is an example of how crazy, sometimes, the application of this rule is; and maybe we ought to make some changes in the budget rule, suggest, as an administration, some changes to the budget rules that will allow some flexibility in these areas which are so clearly in our economic interests.

Ambassador KANTOR. Thank you very much. I appreciate that. We have already discussed it. We discussed it during the NAFTA situation. Of course, it wasn't the time or the place to make those changes.

And I will urge him to not only discuss it within the administration and with the President but also with the Congress itself. And I appreciate your remarks.

Mr. KOPETSKI. This concludes today's hearing.

The Subcommittee on Trade will begin next Tuesday, February 1, to receive testimony from Members of Congress and from the private sector on the Uruguay round results.

The subcommittee currently has 4 days of hearings on the round scheduled in February.

I would like to thank you in particular, Mr. Ambassador, Mr. Schmidt, for your excellent presentations today, and for the audience for participating as well.

Thank you.

Ambassador KANTOR. Thank you very much, Mr. Kopetski.

[Whereupon, at 2:08 p.m., the hearing was adjourned.]

[The following was subsequently received:]

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SUBCOMMITTEES
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SOCIAL SECURITY

JOINT COMMITTEE
ON TAXATION

SAM M. GIBBONS
11th DISTRICT, FLORIDA

Congress of the United States

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

January 26, 1994

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BARBARA TOFFLING
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GREG WONDERS
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The Honorable Mickey Kantor
U.S. Trade Representative
600 17th Street, N.W.
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Dear Mr. Ambassador:

I would appreciate a response in writing to the questions which time would not allow me to ask you at today's hearing. An early reply would be appreciated.

The confectionery industry makes the following inquiries:

1. With the 1979 Tokyo Round, U.S. import duties on confectionery were reduced to the lowest in the world, 0-7%. This unprecedented action left U.S. exports confronting global tariff barriers of 30-90%. Did our Uruguay Round negotiators succeed in removing or significantly lowering these barriers to U.S.-produced confectionery products? And if so, why then is the industry reportedly still facing onerous duties of 30% or more in countries like Japan and Thailand and rates of 50% in Hungary?

2. I understand we will have Uruguay Round agriculture negotiations with Poland in early February in Geneva. Poland is potentially a major market for U.S. confectionery. They have "offered" a 135% rate on these products reduced to 86% by 2001, a duty which is both unacceptable and offensive. Can the Committee be reassured that our negotiators will not conclude an agricultural agreement with Poland unless it provides a reasonable duty of 20% or less on confectionery which will allow market access for U.S. products?

3. The U.S. confectionery industry accounts for more than 60,000 jobs and is the country's second largest industrial consumer of sugar and third largest industrial consumer of dairy products and peanuts/almonds. Given the importance of this industry to our economy, how is it that your office can finish a 7-year multilateral trade round and still have barriers to U.S. confectionery as high, and in some cases higher, than they were before?

The distilled spirits industry makes the following inquiries:

1. The market access agreement reached in December 1993 includes a tariff elimination ("zero for zero") agreement for distilled spirits. However, this agreement is limited to whisky and brandy. It does not cover other distilled spirits, such as vodka, rum, gin and liqueurs, which represent a significant

portion of U.S. exports. I understand that only Japan has objected to eliminating tariffs on these products, while all other participants in the distilled spirits "zero for zero" are prepared to do so.

Do you intend to continue to press Japan to agree to eliminate its tariffs on these products, so that all U.S. exports of distilled spirits can benefit from tariff elimination in major markets around the world?

What are your plans for pursuing this issue with the Japanese?

2. I understand that Japan is seeking a period of ten years to phase out its tariffs on distilled spirits, while the United States, the EC, and other participants favor five years. A ten-year phase-out period would greatly reduce the export opportunities for U.S. companies under the agreement, particularly if it is adopted by other major participants like the European Community.

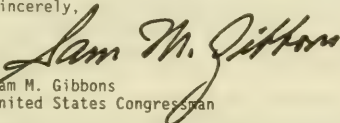
Will you continue to seek the shortest possible period for eliminating distilled spirits tariffs, i.e., five years, in your negotiations with Japan? with other participants?

3. Japan also maintains a discriminatory system of liquor taxation. Under this system, whisky and brandy are taxed nearly nine times as much as shochu, the local Japanese spirit, while imported white spirits, such as vodka, are taxed nearly three times as much. In 1987, a GATT panel condemned this system based on a complaint brought by the European Community. However, Japan has refused to eliminate the discrimination against "Western-style" spirits, despite considerable pressure this year from the EC.

Will the United States support the EC's efforts to seek Japan's compliance with the GATT panel report?

Will you pursue the resolution of this issue under the U.S.-Japan framework agreement?

Sincerely,


Sam M. Gibbons
United States Congressman

SMG:f

Replies to Written Questions
Ways and Means Hearing on the Uruguay Round
January 26, 1994

Market Access Questions

Submitted by Chairman Gibbons

The confectionery industry makes the following inquiries:

1. With the 1979 Tokyo Round, U.S. import duties on confectionery were reduced to the lowest in the world, 0-7%. This unprecedented action left U.S. exports confronting global tariff barriers of 30-90%. Did our Uruguay Round negotiators succeed in removing or significantly lowering these barriers to U.S.-produced confectionery products? And if so, why then is the industry reportedly still facing onerous duties of 30% or more in countries like Japan and Thailand, and rates of 50% in Hungary?

Answer:

Many sugar and chocolate confectionery items in the United States currently fall under Section 22 import protection. Under the Uruguay Round, a tariff rate quota will be established at existing access levels for those Section 22 confectionery and chocolate items. The in-quota rates will be our current duties (i.e., no reductions). The new out-of-quota rates will be a combination of specific and ad valorem duties, initially range from approximately 141 to 159 percent when converted to base period ad valorem values. Based on advice from Congress, our private sector advisory groups and our domestic industry, the United States will make the minimum reduction (15 percent) on the out-of-quota tariffs and existing tariff-only sugar confectionery items.

The U.S. exports many different kinds of sugar confectionery products, so the results in a particular foreign market depend on the type of import protection currently in place (tariff-only or non-tariff import barrier) and the exact product tariff classification. Japan has tariff-only protection for sugar confectionery products. Japan's tariff bindings on sugar confectionery products will be reduced by 15 percent to 66.6 percent. The final bound tariffs in Japan range from 10 percent on many chocolate confectionery items to 29.8 percent on some confectionery items that do not contain chocolate. Thailand will bind its previously unbound sugar confectionery tariffs and make reductions of 33 percent -- which is greater than both the minimum (10 percent) and average cuts (24 percent) required by developing countries.

Currently, Hungary strictly controls imports of sugar confectionery. Under tariffication, Hungary will convert its existing non-tariff import barriers to tariffs and provide access

through tariff rate quotas. Under its minimum access commitment for chocolate confectionery, Hungary will expand access from base period levels by about 20 percent in the first year of implementation (211 tons) and by close to 90 percent (911 tons) in the final year. While the in-quota rate for chocolate confectionery remains at the current level of 30 percent, the out-of-quota tariff will fall from 50 percent to 30 percent over the implementation period. This means that at the end of the implementation period, Hungary will have eliminated all non-tariff import barriers and have a bound tariff of 30 percent. Hungary will establish a current access tariff-rate quota on other sugar confectionery items, and reduce the out-of-quota rate from 80 percent to 51 percent. The current applied tariff on these items is 60 percent.

2. I understand we will have Uruguay Round agriculture negotiations with Poland in early February in Geneva. Poland is potentially a major market for U.S. confectionery. They have "offered" a 135 percent rate on these products reduced to 86 percent by 2001, a duty which is both unacceptable and offensive. Can the Committee be reassured that our negotiators will not conclude an agricultural agreement with Poland unless it provides a reasonable duty of 20 percent or less on confectionery which will allow market access for U.S. products?

Answer:

As you note, our agriculture negotiators are currently in Geneva to continue discussions with Poland and a few others on agriculture. Our negotiators are very aware of the concerns of the sugar confectionery industry regarding Poland and will be pushing for improvements in this area.

3. The U.S. confectionery industry accounts for more than 60,000 jobs and is the country's second largest industrial consumer of sugar and third largest industrial consumer of dairy products and peanuts/almonds. Given the importance of this industry to our economy, how is it that your office can finish a 7-year multilateral trade round and still have barriers to U.S. confectionery as high, and in some cases higher, than they were before.

Answer:

The agriculture agreement requires that non-tariff import barriers must be replaced by bound tariffs (tariffication) with minimum or current access commitments established, generally using tariff rate quotas. Under tariffication, the out-of-quota tariffs are intended to represent the protection provided by the non-tariff import barriers. Hence, in cases where sugar confectionery is currently subject to non-tariff import barriers like quotas, the out-of-quota duty will be higher than the existing tariffs applying to the small amount of imports allowed to penetrate the non-tariff barrier. Minimum or current access

quantities will enter at lower duties. This is the case with the United States and Hungary, as discussed in (1) above.

The Uruguay Round agriculture agreement requires that all agriculture tariffs be bound and reduced by a minimum of 15 percent for developed countries and 10 percent for developing countries. Agricultural tariffs, including those resulting from tariffication, must be reduced by an average of 36 percent for developed countries and 24 percent for developing countries. This means U.S.-produced confectionery products will benefit from lower tariff bindings and/or bound tariff rate quotas.

Question from Sam Gibbons

The distilled spirits industry makes the following inquires:

1. The market access agreement reached in December includes tariff elimination for distilled spirits. However, this agreement is limited to whiskey and brandy. It does not cover other distilled spirits, such as vodka, rum, gin and liqueurs, which represent a significant portion of U.S. exports. I understand that only Japan has objected to eliminating tariffs on these products, while all other participants in the distilled spirits "zero for zero" are prepared to do so.

Do you intend to continue to press Japan to agree to eliminate its tariffs on these products, so that all U.S. exports of distilled spirits can benefit from tariff elimination in major markets around the world?

Answer:

We are continuing to press Japan at all levels of government to improve its offer on white spirits. Several senior level officials have visited Tokyo recently and, earlier this week, senior Administration officials met bilaterally and quadrilaterally with Japan in Geneva to press this issue.

2. I understand that Japan is seeking a period of 10 years to phase out its tariffs on distilled spirits. Will the United States continue to seek the shortest possible period for eliminating distilled spirits tariffs, i.e., five years, in negotiations with Japan?

Answer:

In all of our bilateral and quadrilateral discussions with Japan, we have emphasized our interest in accelerating the phase-out period to five years.

3. Will the United States support the EC's efforts to seek Japan's compliance with the GATT panel report on its discriminatory system of liquor taxation?

Will the United States pursue the resolution of this issue under the U.S.-Japan framework agreement.

Answer:

With respect to the first question, yes, we will support the EC. With respect to the second question, thus far this issue has been pursued outside the formal framework negotiations.

Question from Jim McDermott

At the end of the Uruguay Round it was agreed that Aircraft negotiations would continue for the next year "on the basis of the Chairman's text and other proposals." (Aircraft Committee Chairman's statement to the Trade Negotiating Committee.)

U.S. industry has clearly stated its problem with the Chairman's text and cannot accept that text as the basis for continuing the Aircraft negotiations. Are you going to work with U.S. industry in the months ahead to develop acceptable proposals to put forward in the continuing negotiations?

Answer:

We are carefully reviewing our negotiating objectives with U.S. industry advisors before actively entering this new round of negotiations. As has been our practice, we will continue to work closely with U.S. industry advisors and industry representatives during the entire course of the negotiations.

TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

TUESDAY, FEBRUARY 1, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:39 a.m., in room 1100, Longworth House Office Building, Hon. Sam. M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. The Subcommittee on Trade of the Ways and Means Committee will continue the hearings that were begun the other day in the full Committee on the resources of the Uruguay round of the multilateral trade negotiations.

The subcommittee will receive testimony from Members of Congress and from the private sector on the potential impact of the agreements and their implementation. These hearings will continue tomorrow, starting at 1 p.m., and on February 8, at 9:30 a.m., in room B-318 of the Rayburn Building. Try to get there early. I hope there will be enough seats. I wish we could do it here, but there is just too much business going on in the Ways and Means Committee and they have relegated the continuation of these hearings to B-318. And, on February 22 at 10 a.m., back in this room again, we will conclude these hearings.

We will have to close the hearings today at 3 p.m. because somebody else is going to be occupying this room for the rest of the afternoon. So I will ask the witnesses to please summarize their testimony with the complete understanding that every witness' complete statement will be printed in full in the hearing record.

Chairman GIBBONS. Well, our leadoff witnesses today are two of our House colleagues, Ralph Regula and David Dreier. Ralph and David have both been long interested in this process, and David brings to us his unique position on the Rules Committee, being the ranking member of that Committee on its Subcommittee on Rules that has to do with our process in considering legislation before the Congress.

So I would like to welcome Ralph first, and then David after that. We will have you as a panel. So David, why don't you come forward and take a chair up there? And we will hear Ralph first. Mr. Crane has a statement for the record that we will enter at this point.

[The prepared statement follows:]

OPENING STATEMENT OF HON. PHILIP M. CRANE

Mr. Chairman, I want to welcome the witnesses here today, and to thank them for their valued contributions to the Uruguay round negotiations. There are appointments in some of the texts, for example, services. But the inclusion of services, intellectual property, investment and agriculture disciplines in the world trading system is unprecedented. It insures that we will be able to make more progress in these areas in the future.

While substantial work remains to be done over the next 2 months, we can see that the Uruguay round package will be an invigorating economic stimulus. It promises to multiply opportunities for U.S. firms to increase sales abroad, and thereby create hundreds of thousands of new jobs for U.S. workers.

In order to make the most of these economic benefits, we need to complete work on the implementing bill as soon as possible. With broad bipartisan agreement on the value of the Uruguay round results, there should be no insurmountable political obstacles. The President and the Congress simply must make this bill as high a priority as any other legislation we are considering this year.

Also, the implementing bill must include broad negotiating authority for both bilateral and multilateral objectives, so that the President has the tools he needs to pursue a comprehensive trade policy. Most importantly, we must all agree to a streamlined process, that guards against the inclusion of extraneous, special-interest amendments to the trade laws.

I look forward to hearing the views of the witnesses on these and other matters. Welcome.

STATEMENT OF HON. RALPH REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. REGULA. Thank you, Mr. Chairman. I ask unanimous consent that my full statement may be made a part of the record.

Chairman GIBBONS. Certainly. And it will be.

Mr. REGULA. And I will be very brief. You mentioned David being on Rules. I might say, I'm on Appropriations and without a strong economy, we will not have much to appropriate. So I think trade issues become very important from the standpoint of having a strong economic base both now and in the future in this Nation and not only here, but throughout the world.

Certainly, as our economy grows and other nations', we all benefit from the interchange. It is interesting. Business Week said that the GATT has a potential economic impact 10 times greater than NAFTA. And we heard a lot of data in favor of NAFTA as a way to increase economic activity in this country.

Historically, the United States has had a relatively open market, as compared to other nations. I think this is in part because in the post-World War era, that is, after World War II, we were the one major nation that had not been affected in terms of damage or destruction. So we used trade as a policy to allow other countries to rebuild their economy and, in the process, I think it strengthened their political systems as well. That was a very worthwhile policy decision by the United States. However, this is 50 years later and I think, as we have seen, the nations of Europe and the Pacific rim have built strong economies and continue to do so.

Therefore, a GATT that sets up rules whereby the nations can have fairness in the marketplace, in the trading marketplace as well as free trade, it is very important. And I certainly feel strongly that the GATT treaty, while it may not be perfect, is a very positive step forward for the United States. Of course, obviously, the implementing legislation will be significant in terms of making the agreement work in a way that is fair to the United States vis-a-vis the rest of the world.

I want to pay tribute to Ambassador Mickey Kantor. I think he did an excellent job of pushing hard. Having been in Geneva in December, I know that it was close to foundering because getting 116 nations to agree to anything is not an easy task. And he provided pragmatic leadership and pushed hard in the clutches to make sure that we did get this agreement by the deadline of December 15.

But having said that, I would also say that Ambassador Carla Hills did a lot of work prior to that, that laid the foundation for what happened in the end of 1993. And likewise, I would like to pay tribute to Ambassador Clayton Yeutter, who kicked this thing off in Uruguay and probably got it off to a good start there so that we were able to reach an agreement at the end of 7 years. That seems like a long time. But in the span of history, it is a pretty brief time. And given the magnitude of this agreement, I think it is an outstanding achievement for all considered.

I just want to focus on two specific issues. And we have submitted to the committee a preliminary draft of legislation, suggested ideas to implement, the two items of compensation and sunset transition. Coming from a heavy industry area, I was particularly interested in the dumping provisions that would be in this agreement because it has been a temptation.

Taking steel as an example, there is 100 million tons of excess capacity worldwide and oftentimes the tempting place to dump that capacity is into the U.S. market. And the result can be injury to our companies. There was an effort in Geneva to sunset some of the dumping findings. And there finally was agreement on a 5-year cycle. I think that is the minimum time certainly to maintain the dumping duties because otherwise, and even at 5 years, you have some disincentive for capital intensive industries to reinvest.

This is not a tariff or a tax. It is a duty that is levied for the purpose of making the playingfield level. Again, it is a temptation for other countries to dump into our market and, in effect, shift their unemployment to the United States. These collected duties do not penalize the producer, but only bring their product into line with its real cost.

Under the proposal that I have submitted, these moneys were not given to U.S. companies as a windfall, but must be reinvested, first into their unfunded pension plans which was helpful to the U.S. Government, and second, into research and development which, of course, I think is a positive place to go because it makes our industry competitive prospectively.

Both of these ideas are GATT-legal and, I think, should be part of the implementing legislation. Second, the transition period of existing duty orders and findings, and there are a number of those outstanding at this point, ought to have a full 5-years. We all should start out at the same place and, therefore, reviews of any of those orders should not begin, in my judgment, until 5 years from the date of the enacting legislation.

And it would be my hope, at least, that the implementing legislation would accurately reflect that commitment. This would decrease the time of reviews presently in place and I think it would be a matter of fairness to the industries that have received dumping orders.

There are a lot of other issues in this, and I'm sure that other witnesses will cover many facets of the GATT. But I would simply reiterate that I think it is a very positive step forward for not only the United States, but for the world. The estimate that we have all heard is that it will be a \$5 trillion increase in economic activity worldwide over the next 10 years. And that means that not only will the quality of life in the United States improve and our economic base be strengthened, but hopefully that of our trading partners will be likewise.

In the great scheme of things, I think it will be a major contribution to world peace because historically many conflicts have had an economic base as the reason for their happening. And if we can do something that will cause worldwide growth and prosperity and quality of life, there is much less likelihood of armed conflict.

Thank you and the committee members, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT OF HON. RALPH REGULA
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. Chairman:

I appreciate the opportunity to appear before the subcommittee on the issue of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). I would compliment the Committee and our negotiators for their efforts to obtain a solid agreement that is good for America and her workers.

Let me open with some general remarks concerning the direction now driving trade policy within our nation, and then conclude with specific recommendations regarding the antidumping and subsidy code changes on which I have worked closely since the negotiations commenced. Also, I call to the subcommittee's, and Chairman's, attention a package of amendments in these two negotiation areas, which I have informally submitted to the staff.

As you know, international trade, and its future, is rightfully becoming the center of attention for our nation, and the world as a whole. The world will act to open markets and bring growth or slip back into an a period of desperation and uncertainty both economically and militarily. No longer do nations' economies act independently as they had since the beginning of commerce. This phenomena of economic interdependency has fundamentally changed the way nations interact between one another.

Our guiding national goal should be a high and rising standard of living, and a long-term policy of ensuring better jobs at better wages for all people. Democracy is not solely ideological in content or equally valid in any environment. We must recognize that our own democratic system is one of the major by-products of our affluence, workable primarily because of the measure of our abundance. If our way of life is to continue it requires continued long-term economic growth. In today's world trade is the ultimate determinant of that standard.

The unparalleled standard of living experienced by the U.S. and other developed nations is a fragile thing and easily lost. An economy where significant portions of it's manufacturing base are debilitated -- stripped of its ability to produce and provide jobs to the populace -- will suffer a potential economic depression. You need only to look at our domestic machine tool industry which has largely ceased to exist due to the dumping of subsidized products into the U.S. market. Some argue the textile industry is not far behind. Since 1987, the industry has lost over 42,000 jobs, or 7% of their work force, with an increase in imports of more than 15 percent. If unstopped, this spiral into economic decline could soon be followed by an atmosphere where nations will be more inclined to use armed force to preserve interests their economies can no longer support.

A good illustration of the link between finance and war is the rise of Germany as an industrial power at the beginning of the 20th century. In numerous sectors, German industry developed into a cartel structure, particularly in industries such as chemicals, in which the Germans held scientific superiority. Market power allowed German chemical companies to flex their muscles internationally and dispose of surplus stocks by dumping them in other countries' markets at prices far below the cost of

production. These sales were facilitated by a protective tariff and the cartel organization which combined to allow a high domestic price due to a lack of competition. German dumping practices stifled the growth of new industries abroad and drove existing competitors out of the market. When this was accomplished, it was no longer necessary for the German exporters to sell below cost, and indeed, high profits were realized. Scholars credit this systematic destruction of other nations' manufacturing base as one of the primary forces driving the world to war in 1914.

Perhaps this predatory capitalism reminds you of certain situations in today's world.

In some ways the signs are ominous. World trade in steel is a classic example of an industry that has been distorted by foreign subsidies and dumping practices. In France, the two state-owned steel firms, Usinor and Sacilor, suffered unbroken succession of losses for 12 consecutive years ending in 1987. Despite these losses the firms have dramatically increased spending based on subsidies estimated at \$16 billion since the mid-1970s. In Italy, the steel industry has lost more money than its worth, on average, every 18 months for 15 straight years between 1975 and 1991. It has received over \$20 billion in subsidies since 1980. British Steel received subsidies estimated at \$15 billion from 1976 through 1988. One out of every three U.S. steel workers have lost their job in the last ten years. All of this causes us to ask whether we are watching the dismantling of our own domestic manufacturing base.

As you know, since the end of World War II, the United States has been a member of the General Agreement on Tariffs and Trade (GATT). Over the intervening years the U.S., within the GATT, has reduced tariffs and further opened its markets while other nations increased their tariffs and market barriers so as to protect war ravaged industries and permit an opportunity to rebuild. In effect, a world trade system has been built that is intentionally prejudiced against the United States. This was both appropriate and possible when U.S. manufacturers dominated a world marketplace exhausted by war. But the war has been over for nearly fifty years.

Competition is the lifeblood of the American economic system. So it has been and always will be. But predatory capitalism, as practiced by some nations, has become the warfare of the next millennium. Success has nothing to do with who is the most productive. It has become merely a question of who best manipulates the system.

Most Americans still believe that those who build the best mouse trap will triumph over their less efficient competitors. Yet the Japanese and Europeans are playing the game under a different set of rules.

In the mid-1980s a decision was made by the Japanese government to act in ensuring that their domestic semiconductor industry became the world's producer of this strategic product. As you know, this little silicon chip is the guts required to make any computer work. What stood in their way was eight small companies located in California's silicon valley.

Determined to achieve their goal, Japanese companies subsidized by government cash infusions, sent a memorandum to their retailers commanding them to sell the chips at 10% below whatever the US price, and promising to reimburse them for whatever the loss. Despite staggering losses of nearly \$4 billion Japan prevailed. All but two of the US producers had been driven into bankruptcy and Japan controlled the world's semiconductor market.

Judged by even the lowest standard of fairness which history has applied to Governments, the Japanese semiconductor fiasco is intolerable. Since then, our producers have regained some ground under U.S. fair trade statutes. Last year, the President had some success in lowering barriers to exports of semiconductors to Japan. But in the past months import penetration into the Japanese market has once again dropped as the inequities persist.

If this were not enough, sadly, our own worst enemy remains ourselves.

This past July, the U.S. International Trade Commission (ITC) handed down a ruling on 72 pending steel cases, valued at over \$3.4 billion. Deciding whether foreign companies had illegally dumped steel into the US market by selling their product below its cost of production, the ITC found against our domestic producers in 40 of the 72 cases.

The decision came after a year long legal battle estimated to have cost the steel industry over \$30 million in attorney fees. It is the largest litigation ever brought under U.S. trade law and is viewed as a significant loss for all U.S. manufacturers and their workers.

Over \$100 billion in illegal subsidies have been given to foreign steel makers since 1980. It has resulted in 208,000 lost jobs and closure of more than 450 facilities in the United States. The U.S. Department of Commerce found abuses so prevalent they instituted duties as high as 109% to offset the illegal dumping by foreigners. The ITC decision removes these duties.

With release of the ITC decision, the net worth of many U.S. steel producers were reduced by nearly 20% within 90 minutes of its receipt by the stock market. This was a loss of over \$1.1 billion to the industry.

What these snapshots of failed policy demonstrate is a mind set that has plagued America since the 1940s. It is the notion that the world is moving towards universal free trade, but that the transition requires dislocations and changes within each nation's economy, i.e. job losses and shifts in types of employment. Coupled with this has been the misguided idea that these losses should be readily accepted by us, and others, as the cost of free trade. Oddly, it has been the U.S., having the most open markets in the world, that is constantly lectured to by the rest of the world on the need for free trade while others quietly manage their industries and exploit our naivety.

We speak of this issue in terms of nation against nation, but its reality

is people like you and me who are watching their lives disintegrate before them. Point out a free trader and I will show you a man whose job is not at risk and whose families' future is secure.

Over the past two decades new voices have come forward in our country who have experienced the results of out-dated trade policies. Passive Uncle Sam has finally begun to seek fairness for his own children as well as others.

Are such policy shifts a brief alteration, or schizophrenic convulsion, in the long-term complexion of U.S. policy? In devising trade policy for a nation, you cannot limit your view to its operation during a single year, or even for a short term of years. Instead you must look at its application for the future of generations to come.

The answer, unequivocally and undeniably, is no.

The completion of the Uruguay Round of the GATT represents a step back from the precipice. If implemented properly, it will create a multilateral system which encourages economic growth in all nations while policing against predatory behavior by member countries.

GATT will fundamentally change how we do business around the world ranging from the semiconductor chip in computers to the toothpaste you keep in the bathroom cabinet. No industry will be left untouched. One hundred and sixteen nations are participants to the agreement, comprising most of the economic activity on the planet.

Over the past months, domestic politics has blinded Congress and the public to the significance of this agreement. It is arguably one of the most important treaties to be signed between nations since the beginning of the industrial age. Business week said GATT is 10 times more significant than NAFTA.

Any possible job losses to NAFTA quickly seem trivial when compared to the tens of millions of lost jobs worldwide expected to occur under a poor GATT agreement. Yet, if done right, GATT will generate over \$5 trillion in new world trade over a ten year period and begin an era of economic prosperity never before experienced by the world. Its true that when the tide comes in everyone's boat rises.

For the past seven years I have been very clear about what I believe a successful GATT must achieve to be a real force for progress. It is jobs for Americans and open markets for the world, in that order of priority.

There are those who will argue that the agreement is nothing more than a manifestation of the economic theory of free trade. I'm more interested in economic reality. The reality is that this is the first agreement in fifty years to genuinely benefit U.S. producers and their workers. It will institutionalize a system of trade for the next fifty years that is no longer biased against America -- a system of fair trade, not free trade.

Now the test will be whether the legislation brought before Congress represents the true agreement achieved in Geneva.

Within this document, the two code sections, antidumping and subsidies, are likely to comprise the largest section of the upcoming trade bill. In the package of amendments submitted for your consideration there are offered nearly fifty some changes which are necessary to adequately implement these two codes and preserve the usefulness of our existing laws. Today, I would only mention two specific issues, being compensation and the sunset transition period.

The compensation provision would provide for compensation awards to U.S. companies injured by dumping. Section 11.3 of the agreement is new and would effectively require a review of all outstanding and future antidumping findings or orders or suspension agreements after a passage of five years. In most cases relief from illegally dumped products will be terminated at that time. Since an individual trade case averages \$3 to \$5 million and typically ends with mixed results this conclusive termination of orders after 5 years is a major disincentive for capital intensive industries to reinvest. Compensation awards will improve reinvestment during the window of relief and accomplish the legislative intent of the laws. The provision is revenue neutral.

Lets be clear that this is not a tariff or tax upon the offshore producer. Duties levied under these laws are done so only after it has been established that a foreign producer is illegally dumping the product below its actual cost. Further the collected duties do not penalize the producer but are only to bring the product's price into line with its real cost. Finally, under my proposal these monies are not given to U.S. companies as an unfair windfall, but instead must be reinvested first into their unfunded pension plans, and second, research and development. It is a mechanism that will retain the effectiveness of our laws that are otherwise weakened by the GATT agreement -- meaning U.S. jobs -- and is GATT legal.

The transition period of existing duty orders and findings to comply with the new five year sunset of duties is also a very important concern. Over the coming months, legislative history should make clear that there are no substantive changes other than the introduction of the five year review. Domestic industries with outstanding orders were repeatedly told during the talks that all orders would be treated as entered on the date the agreement took effect. Reviews would not begin until five years from that date. Both congressional contacts with our negotiators and the text of the agreement support this argument. Implementing legislation should accurately reflect that commitment.

Obviously, there exists technical problems in obtaining this goal. Over the past month I have been meeting with the Department of Commerce, USTR, and the International Trade Commission, regarding the best mechanism. My proposal would use a package of simplifications to the process to decrease the time of reviews, and a shifting scale based on the degree of the margins to determine the transition schedule of orders to be reviewed. It also addresses the problems of regional industries under this provision.

Clearly, there are many important issues left to be resolved if these codes are to be implemented in a manner that does not compromise our trade laws. Cumulation, circumvention, standing, constructed value, the list goes on. A weak trade law section within the implementing legislation will only ensure controversy and bring protracted and unnecessary confrontation.

I urge the subcommittee to consider the informal package which was submitted as a means to effectively implement the antidumping and subsidy codes of the GATT Uruguay Round in a manner that is fair to all interests. I believe these proposals reflect the concerns of a majority of Congress, as well as the position taken by our government within the negotiations.

Thank you for your time and consideration.

Chairman GIBBONS. Well, thank you for a very wise statement. David.

STATEMENT OF HON. DAVID DREIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DREIER. Thank you very much, Mr. Chairman, Mr. Thomas, Mr. Payne and Mr. Hoagland.

Let me first say that it is a great honor for me to sit before this subcommittee in total agreement with my friend from Ohio on a trade issue.

Let me also say that it was a great privilege for me to be able to be part of an important delegation led by you, Mr. Chairman, and Chairman Rostenkowski in the final days of the Uruguay round discussion, and I thought that it was a very helpful and beneficial meeting. I learned a lot. I do not know how much the negotiators learned from us. But, clearly, it was a series of meetings that I thought were extraordinarily helpful.

Mr. Chairman, this agreement, while it is called the Uruguay round, I really believe that it should be called the American round. The major initiatives of this agreement are the direct results of U.S. proposals originating in the prior two Republican administrations to reduce or eliminate barriers that our major export industries face from unfair trade practices.

Once this agreement is fully implemented, trade rules will protect intellectual property rights, service providers, agriculture and investment. The United States is the international leader in those fields, and Mr. Thomas from my State of California is at the head of the pack.

Continuing to open new foreign markets to American exports is critical to our national economy and to California's economy. Exports have become California's most important job creating force, and international trade will soon account for 25 percent of our State's economy.

The administration's market-opening free trade policies should not end with GATT and NAFTA. President Clinton was fortunate to have one complete and another near complete products on his desk when he took office, but now he must construct his own trade agreements. To negotiate these agreements, the President unquestionably requires an extension of fast track negotiating authority.

Despite the efforts of protectionists to slander and distort the trade negotiating authority that provides for expedited congressional consideration of trade agreements, there is no sense denying the truth. Fast track has been an unquestionable success. It has given the President the ability to negotiate strong trade deals like this GATT and NAFTA, which promote our long-term economic interests and create good jobs.

Fast track is essential for our Nation's trade policy to be viewed seriously by our trading partners. It is a visible demonstration of the administration's ability to speak for the entire U.S. Government, and it sets out clear procedures for approval of trade agreements so that the administration, American public and our trading partners know what to expect once an agreement is made.

Fast track has given Congress and the public extraordinary access and input into the negotiation process. Let me repeat that:

The fast track authority has given Congress and the American public extraordinary access and input into the negotiation process. While the term "fast track" might indicate otherwise, the full process is neither fast nor secret. For example, during the NAFTA negotiations, Ambassador Hills held over 330 congressional NAFTA meetings, over 350 meetings with private sector advisory committees, and 350 briefings for trade associations—in all, a total of over 1,000 meetings.

Fast track has not cut Congress out of the trade process. Instead, fast track institutionalizes Congress' ability to influence trade negotiations. Fast track permits Congress to set the parameters for negotiations. Without fast track, the administration would negotiate agreements under Executive powers. There would be no requirement for input from the Congress, and, I should say especially to this subcommittee, agreements could be brought to the Senate merely as treaties, cutting out the House from the entire process.

Mr. Chairman, I encourage you to use the GATT implementing legislation to extend fast track authority to President Clinton for at least the 3 remaining years of his term in office. This extension should grant the President the authority for followup negotiations to the Uruguay round in order to achieve multilateral agreements in those areas not completed in this round, as well as authority to pursue further bilateral agreements.

Congress should not bind the President's hands in his capacity to carry on foreign trade negotiations. Narrow fast track extensions might do the job when nearly completed agreements just need to be finalized, but it is not adequate as we attempt to break new ground.

Altering the fast track process in order to place specific conditions on negotiations would give interest groups that wield influence in Congress a veto over the President's authority to negotiate with foreign countries. This type of situation could lead to the President being forced to sacrifice the economic interests of 99 percent of the American people in order to satisfy the conditions placed in a grant of fast track authority by powerful congressional supporters of narrow interests such as, for example, the auto parts industry, textile producers, or semiconductor manufacturers.

Every industry deserves a place at the table when the President is consulting with domestic manufacturers and trade associations, but no industry should have veto authority over the President's ability to negotiate. This would constitute an unparalleled and unwanted secession of trade authority from the President to special interests. I might add, this would go directly against the unquestioned desire of the American people to redirect power from narrow special interests to the broader national interest.

Mr. Chairman, failing to extend broad fast track negotiating authority in the GATT implementing legislation threatens to shut the door on the opportunity to cut trade deals that can bring tremendous economic benefits to the American people. Keeping that door open should be our top priority. Whether this administration can extend the NAFTA south to incorporate countries such as Chile or, as I would recommend, undertake free trade negotiations with Japan are open questions that can only be answered if we give the President the chance through fast track authority.

Finally, Mr. Chairman, I would like to touch on the issue of the revenue impact of the implementing legislation this committee will craft. In particular, I believe it is imperative for this committee to come to firm conclusions, using the best forecasting available, to determine whether the tariffs reductions undertaken to implement this GATT will lead to a net loss of revenue to the Federal Government, and a corresponding increase in the Federal deficit or a net increase in revenues which will help bring down the deficit.

The administration has estimated that the tariff rate reductions will result in \$11 billion less in tariff revenues over 5 years. At the same time, the President has said that implementing GATT will result in a \$1 trillion boost in our economy over 10 years. If we realize only \$200 billion, a fifth of that growth in the first 5 years that the agreement is implemented, and Federal receipts increase by 19 percent of GDP growth, as CBO estimates in their Economic and Budget Outlook for Fiscal Years 1995-99, then the GATT will cause total receipts to increase by \$27 billion, after the loss of \$11 billion in customs duties and fees. This is a net revenue increase that will help reduce the deficit.

If GATT will help lower the deficit, it does not make sense to hinder consideration of the implementing legislation with budget rules intended to block bills adding to the deficit.

Mr. Chairman, I thank you very much for the chance to be here. The one final message I would have is that I hope very much that we can move as expeditiously as possible to get this out of the subcommittee, through your full committee, up to the Rules Committee and down to the House floor, so that early this spring we will be able to move ahead with what I believe is one of the most important agreements this country has been involved in.

Thank you very much, Mr. Chairman.

Chairman GIBBONS. I thank both of you for your testimony.

Ralph, you put your finger on a problem. We are going to have to implement those decisions in GATT, and a lot of them will require some very careful drafting in this subcommittee. We will keep the process open, so that all members can be advised and all interests can be advised as to what we are doing. We can get input from those people about whether we are following the language and the spirit of GATT or whether we are not.

David, I was glad to hear your figures about the net cost, which really turns out not to be a cost, but a plus from this agreement. Many people have asked me how we are going to raise the money to pay for this agreement. I do not think it is necessary to raise any money, frankly. The agreement more than pays for itself. But we are going to have to convince other people of that same thing.

On fast track, I agree with what you say. You know, the administration could cut us out and call it a treaty and go to the Senate and get it done over there. I think the way fast track has been implemented by all of the administrations, both Republican and Democrat, has shown that it is a democratic way of getting things done. But, obviously, we cannot go out and negotiate an international agreement and then bring it back to Congress and tear it all apart on the floor, as we would be so apt to do.

So I think we have hit a happy solution to a complex problem of how we deal internationally and still involve the Congress in the ratification process and in the deliberative process.

I have found that USTR leans over backward to try to include the administration. You mentioned Clayton Yeutter and I would also add the name Bill Frenzel because without Bill and without Clayton, we probably would have never gotten this thing started. They both did yeomen work. And Mrs. Hills did a tremendous job. I do not think I have ever run into anybody who had a greater command of the law and the facts of a situation than Carla Hills. She did a tremendous job. Then Mickey Kantor brought to the job a particular flare, more substance than Bob Strauss, but Bob Strauss knew how to make a deal and that is what it took. I think Mickey possessed that knowledge, too, and did a great job.

Mr. DREIER. Didn't Bob Strauss always ask the staff to explain the deal?

Chairman GIBBONS. Sometimes he only mentioned that as he got on the airplane. He knew how to put a deal together, and it takes that kind, when you are dealing with so many countries as you have to in this kind of negotiation.

I thank both of you for coming and both of you for helping.

Mr. Payne.

Mr. PAYNE. I do not have any questions, but I too wanted to thank both of you for being here. I agree with the comments of the Chairman. David, in particular, I want to thank you for the part you played, as we went to Geneva. I thought you did a very good job there, and I want to commend you for that. Thanks for doing that.

Mr. DREIER. Thank you. I said I was part of the trip, but I did not say where we went. [Laughter.]

Chairman GIBBONS. Bill.

Mr. THOMAS. Thank you, Mr. Chairman.

I agree completely with your analysis, Dave, and the Chairman's analysis of the U.S. Trade Representative's office, whether it is Republican or Democrat.

The one point I want to underscore is this enormous outreach, which I think is very smart on the part of any administration, to make sure that we are full partners in the Final Agreement even though, as Members of Congress, we cannot do the actual negotiating ourselves. Extensive consultations are done with an extremely small staff in comparison to other agencies and departments around here.

We need to in part rethink the historical role of the Department of Commerce and others along with the U.S. Trade Representative, and, frankly, the model that you have outlined and that the Chairman has agreed with is a very positive one and one I think we need to reinforce on any administration, because it is the ideal way to make sure that Congress is able to be a full partner in the areas in which we can be involved.

I share your concerns about budget rules and how they do not reflect reality. We are dealing with that in health care right now, where everyone knows \$1 of preventive care up front will save enormous money 6, 10, 20 years down the road. But the budget will not allow us to score those as real savings, when, in fact, we know

they are true. I agree with your analysis that the trade agreement without a doubt will produce a significant plus in revenue for our society, but I think you are going to have trouble over on the other side of the Capitol trying to waive budget rules, not because it does not make sense in this instance, but because a pattern of waiving budget rules opens up all kinds of games that are going to be played.

I want to compliment you on the role you played in NAFTA, at an extremely critical time. In dealing with that issue, you basically wrote the case history of someone who is not on a key subcommittee being able to take not only an active role, but a significant leadership role, to help bring about the result that at least I am very pleased with. And I want to thank you for your intelligence in figuring out how to get out in front of that operation and drive it to the result that we obtained.

Ralph, if we think we are going to be able to put the Europeans and other folk in a corral on dumping and subsidy, we can try to set up the rules, we can try to make them as transparent as possible, but it will be a never-ending fight to get these folks to own up. The structure you have provided we are going to take a look at. We need all the tools that we can possibly conceive in our tool chest, as we try to get these folks to do what they should do, but will not.

The old GATT was frustrating, because we did not have as broad enough a scope and as detailed a sanction structure. We have got a bit more detailed sanction structure and a broader scope in the new WTO. I am not optimistic at all that the current tools are going to be anywhere near adequate to get these folks to walk the straight and narrow. I appreciate your clear specific efforts to help us out in the dumping and subsidy area.

Mr. REGULA. I think it is important to be fair, as well as free, and that is what we are seeking, is fairness, and this gives people confidence when they know the rules are fair in terms of their trade activity.

Mr. THOMAS. It is going to be a long-term battle to make sure it is "fair." It has been in the past and it will be in the future.

Mr. REGULA. Well, the United States does well in Super Bowls. [Laughter.]

Mr. THOMAS. Thank you, Mr. Chairman.

Chairman GIBBONS. Yes, sir.

Thank you all very much. We appreciate it.

Mr. REGULA. Thank you.

Mr. DREIER. Thank you, Mr. Chairman.

Chairman GIBBONS. Let us go next to the Emergency Committee for American Trade, Duane Burnham. Mr. Burnham is chairman and chief executive officer of Abbott Laboratories, and is also chairman of the Emergency Committee for American Trade.

I want to welcome you here. I have had the pleasure of dealing with the Emergency Committee for American Trade for a long time. The emergency is still on. Keep going, you are doing a good job.

Mr. Burnham, we would be glad to listen to you.

STATEMENT OF DUANE L. BURNHAM, CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, AND CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, CHICAGO, ILL.

Mr. BURNHAM. Thank you, Mr. Chairman. Good morning. Good morning to other members of the committee.

This is my initial appearance before your committee as the chairman of the Emergency Committee for American Trade. I am pleased to be here, and I thank you for the opportunity to express our committee's tentative endorsement of the Uruguay round trade agreement on behalf of the approximately 60 members of our group.

I want at the outset to say that most of us in the business community tend to look at this agreement through the prisms of our own sectoral interests, obviously. We look to see whether in the textual detail of the agreement our hopes or fears are realized, and we hope that it is our hopes, obviously.

When we stand back and view the agreement as a whole, however, we cannot help but be impressed and somewhat overwhelmed with its breadth and scope, and indeed its promise of increased world economic growth. The Uruguay round is a testament to the foresight, diligence and competence of the negotiators, as was mentioned earlier in the testimony of my two predecessors. We are indebted to the U.S. negotiators and to the Ways and Means Trade Subcommittee for your crafting of the negotiating authority that enabled the President to bring the Uruguay round to a successful close.

The market access openings for U.S. exporters of goods are in many areas truly momentous. Many ECAT members will benefit from the agreement to eliminate tariffs. All of our members will benefit from the deep tariff cuts. Those cover about 85 percent of world trade, including items of key interest to U.S. exporters as a whole.

Also, we applaud other features of the Uruguay round that bring international trade in agriculture and textiles within the rules and disciplines of the GATT, as well as the investment provisions. We hope that, at our upcoming ECAT annual meeting on February 23, we will be in a position to formally announce our endorsement of this round.

In an agreement as wide ranging as the Uruguay round, there are bound to be areas of disappointment. While I do not want to dwell on these areas, I do want to note three of them and express the hope that future negotiations will be able to help resolve them.

One of the shortcomings of the Uruguay round was the failure to secure satisfactory market access commitments for financial services, insurance, telecommunications and the audiovisual industries. What was achieved in the service area, however, was the first multilateral, legally enforceable agreement covering trade and investment in the services sector.

A second area of concern is intellectual property rights. U.S. industries with a critical stake in strong international rules governing patents, trademarks, copyrights, trade secrets and semiconductor chips believe substantial progress was made in securing protection for a full range of intellectual property rights, together with

appropriate enforcement mechanisms. They support implementation of the GATT.

At the same time, there are shortcomings in the intellectual property area. For example, the United States was unable to achieve full national treatment for American audiovisual industries. It was also unable to shorten the 5- and 10-year transition periods in which developing countries are to implement agreements protecting intellectual property rights. These periods are excessive, particularly the 10-year period, which discriminates against the pharmaceutical industry.

The United States should seek further improvements in intellectual property protection through both bilateral and multilateral negotiations in the future. The audiovisual industry also should be brought within the coverage of the agreement's intellectual property provisions.

Third, I would like to mention our hope that the ongoing residual market access negotiations for wood, nonferrous, and chemical products prove successful. A number of ECAT companies are major producers in these areas.

Before concluding, I would like to address two areas worthy of further attention. We see great potential for U.S. trade through the aggressive use of the new dispute settlement procedures of the World Trade Organization. We recommend careful monitoring of the experience under these new procedures when they become effective. These procedures can constitute a major instrument for securing improved market access for U.S. goods, services and investment.

Finally, there is a collateral trade issue that may be proposed as part of the Uruguay round implementing bill. The President will need negotiating authority to conclude the ongoing residual Uruguay round market access negotiations, and possibly to expand the NAFTA pursuant to its accession clause.

The Congress, however, should proceed carefully in crafting trade negotiating authority for negotiations beyond these necessary items. Further negotiations will have to deal with a number of contentious issues in areas of the environment, labor, and antitrust, on which there are strongly held divergent views, both domestically and internationally.

Mr. Chairman, thank you very much for having me here today.
[The prepared statement follows:]

TESTIMONY OF DUANE L. BURNHAM, CHAIRMAN OF THE BOARD AND
CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, AND CHAIRMAN,
EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE WAYS
AND MEANS TRADE SUBCOMMITTEE HEARING ON THE URUGUAY
ROUND OF MULTILATERAL TRADE NEGOTIATIONS

TUESDAY, FEBRUARY 1, 1994

Good morning Mr. Chairman and members of the Ways and Means Trade Subcommittee.

This is my initial appearance before your committee as the Chairman of the Emergency Committee for American Trade. I am pleased to be here, and I thank you for this opportunity to express the tentative endorsement of the Uruguay Round trade agreement on behalf of the approximately 60 members of ECAT.

I want at the outset to say that while most of us in the business community look at the agreement through the prisms of our own sectoral interests to see whether in the textual detail of the agreement our hopes or fears are realized, if we stand back and view the agreement as a whole, we cannot but be impressed and somewhat overwhelmed with its breadth and scope and, indeed, its promise of boosting world economic growth. The Uruguay Round is a testament to the foresight, diligence, and competence of its negotiators. We are indebted to them and to the Ways and Means Trade Subcommittee for its crafting of the negotiating authority that enabled the President to bring the Uruguay Round to a successful close.

The market access openings for U.S. exporters of goods are in many areas truly momentous. Many ECAT members will benefit from the agreement among the industrial and some developing countries to eliminate tariffs in the areas of construction, agricultural, and medical equipment, pharmaceuticals, paper, and steel. Tariff elimination was also agreed to for beer, distilled spirits, toys, and furniture products. All of our members will benefit from other deep tariff cuts covering about 85 percent of world trade, including items of key interest to U.S. exporters as a whole.

Among other features of the Uruguay Round that we applaud are those bringing international trade in agriculture and textiles within the rules and disciplines of the GATT. Our ECAT members in the grain trading, food processing, and retailing industries particularly welcome these advances.

We also applaud the investment provisions, particularly those prohibiting such practices as local content and trade-balancing requirements as a condition of investing in foreign countries. We hope that future negotiations under the new investment provisions of the GATT will outlaw other similar restrictive investment practices.

The reason for my noting that ECAT's endorsement of the Uruguay Round is tentative is that several of our members are producers of wood, non-ferrous metals, and chemical products that are subject to the ongoing residual market access negotiations. We hope for successful outcomes in these areas so that at our ECAT annual meeting on February 23, 1994, we will be in a position to formally announce our endorsement.

In an agreement as wide-ranging as the Uruguay Round there are bound to be areas of disappointment. While I do not want to dwell on these areas, let me note three of them and express the hope that future negotiations are able to resolve them.

One of the shortcomings of the Uruguay Round was the failure to secure satisfactory market access commitments for the financial services, insurance, telecommunications, and audio-visual industries. What was achieved in the services area, however, was the first multilateral, legally enforceable agreement covering trade and investment in the services sectors in the form of the General Agreement on Trade in Services (GATS), which will be subsumed under the new World Trade Organization (WTO).

While such rules as national treatment are included in the GATS, they are to apply to those service sectors for which market access commitments have been negotiated. While such commitments were negotiated for several service sectors, including some professional and a variety of business service sectors, market access commitments were not achieved for the critical financial services, insurance, telecommunications, or audio-visual industries.

Because of their failure to secure market access commitments, the financial services, insurance, telecommunications, and audio-visual industries were dropped from the GATS schedule to which the new services rules such as national treatment are to apply. Market access negotiations, however, are to continue through the end of 1995 for these services sectors.

While the above services industries are disappointed with the failure of the market access negotiations, they are pleased at the decision to drop them from the GATS schedules. Otherwise, the United States would have been obliged to provide national treatment to firms from foreign countries whose markets are essentially closed to U.S. firms.

The shipping industry was also dropped from the negotiations to the general satisfaction of U.S. shippers, including ECAT members Sealand Service and American President Lines.

In terms of the continuing market access negotiations for financial services, with the exception of a six-month period beginning on the date of implementation of the Uruguay Round agreement (scheduled for July 1, 1995), the United States government did retain its freedom of action to implement discriminatory sanctions in this sector, in order to have some leverage on the countries with the most serious barriers. The Congress is currently considering legislation to establish a reciprocal national treatment policy in the U.S., and to grant the relevant authority to the Executive Branch (the "Fair Trade in Financial Services" bill). This bill would give U.S. officials authority to disapprove applications by financial firms from countries which deny U.S. firms national treatment in their markets -- authority comparable to that granted the European Union's supervisory bodies under the Second Banking Directive. Meanwhile, we hope that significantly improved market access -- especially in the emerging markets of Asia and Latin America -- can be achieved in the continuing negotiation. At the end of 1995, the U.S. will determine whether or not sufficient concessions have been made by enough countries to justify assuming an unconditional MFN obligation from that time on.

Despite the failure of the market access talks in this sector, the major U.S. financial services firms have expressed their support for congressional approval of the overall Uruguay Round implementing legislation.

Another disappointment for ECAT members is with certain provisions of the intellectual property negotiations. U.S. industries with a critical stake in strong international rules governing patents, trademarks, copyright, trade secrets, and semiconductor chips believe substantial progress was made in securing protection for a full range of intellectual property rights together with enforcement mechanisms. They support implementation of the GATT Agreement.

At the same time, there are shortcomings in the intellectual property provisions and the U.S. negotiating agenda in this area is far from complete. For

example, the United States was unable to achieve full national treatment for American audio-visual industries. It was also unable to obtain a shortening of the five and ten-year transition periods for developing countries to implement the agreements to protect intellectual property rights. These periods are excessive, particularly the ten-year period which applies discriminatorily to the pharmaceutical industry.

The U.S. government should develop an aggressive strategy to seek precise interpretations of ambiguous language in the agreement with regard to patents. The U.S. should also seek further improvements in intellectual property protection between now and July 1, 1995, when the agreement is scheduled to take effect, as well as thereafter through both bilateral and multilateral negotiations. The audio-visual industry also should be brought within the coverage of the agreement's intellectual property provisions.

A third area of concern that I would like once again to mention is the residual market access negotiations for wood, non-ferrous, and chemical products. The U.S. chemical industry, for example, successfully proposed that the Uruguay Round adopt the objective of harmonized tariffs for international trade in chemical products. While great progress was made, several countries to date have not agreed to the harmonized tariff levels. The industry believes that participation by Argentina, Brazil, Venezuela, India, Indonesia, and Thailand is essential to conclusion of a successful harmonization agreement. Their failure to join and thereby maintain their higher chemical tariff levels would encourage unfair trade distortions and set an unfavorable precedent for other countries that might in the future seek to accede to the World Trade Organization.

While there are other problem areas for members of ECAT in the agreement, they do not add up to a reason for ECAT not to support the Uruguay Round agreement. Even in areas of disappointment, the agreement contains valued offsets in such areas as substantially improved market access for exports of U.S. goods, services, and investments that will benefit our firms, our workers, and the U.S. economy as a whole.

One area of considerable concern to ECAT is the antidumping provisions. While we favor some and oppose some of these provisions, we feel that on balance the antidumping provisions merit our support. We expect that one of the more heated debates in the writing of the Uruguay Round implementing bill will be over the antidumping language. We hope that in the process the balance achieved in the antidumping provisions will not be unraveled.

An area of some contention in the business community has to do with the new dispute settlement features of the new World Trade Organization that is scheduled to replace the GATT.

The existing dispute settlement mechanisms of the GATT have been complained of for years because they often take several years to conclude and because the effectiveness of the mechanism can be aborted because a party to a GATT dispute can block the decision from taking effect.

The new Dispute Settlement Understanding (DSU) applies to disputes arising under any of the Uruguay Round agreements. It provides for strict time limits, guarantees the right to a panel, guarantees the adoption of panel reports unless there is a consensus to reject the report, and authorizes retaliation if a member does not comply with the findings of panels.

Some are concerned that the new and automatic dispute settlement mechanism could limit Section 301 in U.S. law by eliminating the ability of the United States -- or any other member of the GATT -- to veto any GATT panel finding against itself. For example, under the current system, were the United States to file a Section 301 action against any country and should a GATT panel set up to adjudicate the U.S. complaint find the U.S. complaint invalid, then the United

States could simply veto the panel finding, which would then have no effect. The United States could then take any action of its choosing against the offending country.

Under the new procedures, neither the United States nor any other country would have this veto authority since panel reports will be approved by consensus. Should the consensus be against any U.S. Section 301 complaint, it would make it more difficult for the United States to initiate a trade retaliatory action against the other country since it would overtly be against U.S. obligations pursuant to the WTO. In such an instance, however, the United States would have the right to appeal the panel report to an appellate WTO body.

Although the new dispute settlement procedures could work against a U.S. trade complaint as in the instance above, the new procedures on the other hand could equally work in favor of U.S. trade complaints against objectionable foreign trade practices that burden U.S. commerce.

We would, therefore, recommend a careful monitoring of experience under the new dispute settlement procedures when they take effect, presumably after July 1, 1995. We see a great potential for U.S. trade through an aggressive use of the new dispute settlement procedures as a major instrument of securing improved market access for U.S. goods, services, and investment.

Before concluding, I would like to address a collateral trade issue that may be proposed as part of the Uruguay Round implementing bill.

It is the issue of future trade negotiating authority for the President. Since we have just swallowed a lot in the Uruguay Round, a period of digestion might be in order before we decide on the specific new trade negotiating authority that might best advance the U.S. national interest. While certainly not opposed to a grant of negotiating authority for the President, we simply think that we should proceed with appropriate caution.

What is clear is a need for authority for the President to conclude the ongoing residual Uruguay Round market access negotiations, including those scheduled to be completed in the near future and through to January 1, 1996. Those with whom we are negotiating should be assured that the results, if any, will be subject to "fast track" consideration.

It also appears clear that a "fast track" authority would be necessary for any expansion of the NAFTA pursuant to its accession clause. Otherwise, any desired expansion could be frustrated in absence of the assurance of "fast track" consideration by the Congress.

The President has listed negotiations on matters of the environment, labor, and antitrust regulations as his top three trade negotiating priorities. These are areas of promise but are also areas where there are strongly held divergent views both domestically and internationally. There is thus a real need to develop links and mechanisms for the resolution of environmental-labor-antitrust and trade conflicts and to proceed carefully in crafting trade negotiating authority for such negotiations.

Mr. Chairman, thank you for having me here today.

Chairman GIBBONS. Thank you very much, Mr. Burnham.

Thank you for pointing out those pitfalls that are ahead of us there, and your concern about the agreements that we did not successfully conclude. They are high on our agenda and we have legislation moving through the Congress now. I do not know what the outcome is going to be on financial services. I notice that the Federal Reserve yesterday opposed free trade in financial services legislation. We would like to listen to their complaints and judge them against the proponents of that legislation.

Your organization has played an extremely active role in monitoring all of these agreements. I want to commend it again for what it has done. You have had a fine professional staff working on all of this for a long period of time, and we need all of your participation in all of it.

Mr. BURNHAM. Thank you.

If I might just mention that Bob McNeill has been involved in this process through this entire period and has done an outstanding job in support of all of these areas over the entire period that our organization has been in it.

Chairman GIBBONS. Bob and Cal both.

Mr. BURNHAM. Bob, and Cal, as well.

Chairman GIBBONS. Bob goes back before I was born in this. I am glad to see him there and functioning as vigorously as he does.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Mr. Burnham, I want to first acknowledge and thank you for a facility that your organization has in my district, in Altavista, Va. Ross Laboratories is there providing an excellent employment opportunity for many of the people in my district. That is not only an excellent company in the way that it operates there, but they are model corporate citizens and they do a lot in Altavista and throughout the central part of Virginia, and I wanted to acknowledge it, and while I have this opportunity to thank you very much for that.

Mr. BURNHAM. Thank you. I appreciate your comments.

Mr. PAYNE. I want to follow up on the last item you mentioned having to do with future authority. You heard David Dreier as he was talking about fast track and the extension of the fast track. Has ECAT taken a position on the extension of the fast track per se?

Mr. BURNHAM. We have not taken an official position. However, we would encourage fast track with respect to the implementing aspects of the Uruguay round, and also to be sure that in terms of NAFTA the President has the authority he may need for access in terms of other countries that may join.

Mr. PAYNE. But in terms of extending it beyond those two instances—

Mr. BURNHAM. We have not taken an official position, but I think we should be very cautious in extending the fast track authorities beyond those two.

Mr. PAYNE. Thank you very much.

Chairman GIBBONS. All right. Thank you, sir. We appreciate it.

Mr. BURNHAM. Thank you, Mr. Chairman.

Chairman GIBBONS. Now the Labor/Industry Coalition for International Trade (LICIT), and we will have first Albert Moore, and, second, Howard Samuel.

Mr. Moore is president of the Association of Manufacturing Technology, and Mr. Samuel is executive director of LICIT.

STATEMENT OF HOWARD D. SAMUEL, EXECUTIVE DIRECTOR, LABOR/INDUSTRY COALITION FOR INTERNATIONAL TRADE (LICIT)

Mr. SAMUEL. Mr. Chairman, if I may, if the Chairman allows, I will start.

Chairman GIBBONS. Go right ahead, Howard.

Mr. SAMUEL. I do so with appreciation to the Chairman and the staff for allowing us to be represented by one person from labor and one from management, since we do represent a coalition, a rather unique coalition, which has been dealing with trade matters for almost 15 years.

Chairman GIBBONS. You all have done a fine job, too.

Mr. SAMUEL. Thank you.

I would point out that among the companies and unions which are involved with LICIT, such companies as Intel, Motorola, the Machine Tool Group and Corning are manufacturing companies which are highly successful and highly concerned with their export opportunities. We do represent companies which are very much involved in the export trade.

At this moment, much uncertainty remains and will remain for some time as to whether the overall Uruguay round result will on the whole be better for U.S. industry than the status quo of no agreement at all. Until Congress adopts the implementing legislation for the round, how U.S. law will be affected by its provisions will not in all cases be clear.

But, despite the uncertainties, LICIT believes that the current U.S. law provides domestic industry, particularly manufacturing industry, with more effective remedies against injurious foreign trade than will exist under the new Uruguay round regime, which gives the implementing legislation process added importance in the weeks and months ahead.

What I would like to touch on are the questions regarding dumping and subsidies, and I will do so very briefly simply by referring to my statement.

In connection with dumping, we refer to the sunset provision, which gives us some concern. Here I must advise the Chairman with some embarrassment that an unfriendly gremlin added the word "not" on the last page of our testimony where it should not be. So with apologies, that mistake we found too late to correct in the version we brought here.

We also refer to the issues regarding standing and the dumping calculation provisions.

In respect to subsidies, the Uruguay round code is a fundamental departure from the current GATT and U.S. unfair trade law. For the first time, subsidized goods which cause injury will be immune from either GATT complaint or U.S. trade remedies. Here again, we refer to a number of specific issues, the standard of review, the

definition of financial contribution and the new green-lighted subsidies.

In respect to both antidumping and subsidies, our own statutes must be strengthened to the maximum extent feasible consistent with the new codes, and provision should be made to compensate firms injured by dumping through antidumping duty collections and to firms injured by foreign subsidies through countervailing duty collections.

Finally, as Congress considers implementing legislation, it should pave the way for negotiations leading to the establishment of a GATT working party committed to addressing unfair labor conditions in member countries, a goal which was originally sought by the U.S. Government in 1988 and which was reiterated by President Clinton following his meeting with European Union leaders in January 1994.

I would now like to turn to my colleague Albert Moore, president of the Association for Manufacturing Technology, who will discuss the issues of section 301 and intellectual property.

[The prepared statement follows:]

**Testimony of Howard D. Samuel
Executive Director
Labor/Industry Coalition for International Trade**

**before the
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
February 1, 1994**

Thank you, Mr. Chairman. As you know, the Labor/Industry Coalition for International Trade, or LICIT, for almost fifteen years has represented a unique coalition of major companies and national trade unions vitally interested in the role that trade can play in strengthening the nation's industrial capacity and enhancing our standard of living. We are grateful that the Chairman has permitted us to fulfill our coalition role by allowing two of our representatives to make our presentation this morning.

Our concern with the Uruguay Round was first expressed in a study, issued in 1989, and in an analysis of the Dunkel Texts issued approximately six months ago.

Today, we are in the midst of a review of an assessment of the Round. There is no question in our minds that the final agreements are an improvement over the Dunkel Texts. But I assume this Committee will agree that an evaluation of the Uruguay Round agreement must be based not on a comparison with prior drafts, but on how effective the final texts, and the U.S. implementing legislation, will be in achieving such U.S. objectives as removing foreign trade barriers, countering foreign trade distorting practices, lowering tariffs, and creating multilateral disciplines over services and intellectual property.

As of this moment, much uncertainty remains, and will remain for some time as to whether the overall Round will, on the whole, be better for U.S. industry than the status quo of no agreement at all. First, until Congress adopts the implementing legislation for the Round, how U.S. law will be affected by these provisions will not in all cases be clear. This much is within our own nation's control. However, there is a second unknown: the Agreement's provisions will be interpreted in Geneva, not the United States, by the new World Trade Organization and by dispute settlement panels. How this new process will work, unfortunately, cannot be known until well after the new package of Agreements has been signed.

At the present time, despite the uncertainties, we believe that current U.S. law provides domestic industry with more effective remedies against injurious foreign trade than will exist under the new Uruguay Round regime.

I would like to deal first with the issue of dumping. Recognizing that an effective anti-dumping regime is essential to an open trading system as well as to the preservation of the American industrial base, Congress specified in the 1988 Omnibus Trade and Competitiveness Act that a key U.S. objective in the Uruguay Round was a strengthening of international rules relating to antidumping.

Unfortunately, countries that dump and subsidize have had an unfavorable effect on the Antidumping and Subsidies Codes agreed upon in Geneva last December 15. Nevertheless, the Codes provide a number of opportunities to preserve and strengthen our unfair trade laws. Implementing legislation must be drafted to be as strong as the Codes permit. Our chief areas of concern are:

Sunset: The implementing legislation must clarify that the standards for finding that dumping or injury is likely to continue or recur are not relatively easy for domestic industries beset by unfair trade practices to meet.

Standing: The industry should be defined to permit standing, consistent with the Code, in the way most conducive to permitting U.S. industries faced with injurious unfair trade practices to win relief.

Dumping Calculation Provisions: Antidumping Code provisions on de minimis, start-up costs, and averaging constrain the ability of the U.S. Government to fully offset the amount of dumping. The Code should be implemented by establishing certain standards which ensure that the amount of dumping is fully offset to the extent permissible under the Code and thus ensure that foreign companies may not exploit potential loopholes to avoid dumping duties.

Subsidies Issues: With respect to the issue of subsidies, the Uruguay Round code is a fundamental departure from the current GATT and U.S. unfair trade law. For the first time subsidized goods which cause injury will be immune from either GATT complaint or U.S. trade remedies. Among the key provisions:

Standard of Review: Dispute settlement panels will have the power to review our application of U.S. unfair trade laws. It is imperative that in doing so the panels respect reasonable factual and legal determinations by U.S. agencies. Standard of review language was included in the Antidumping Code. It was not explicitly included in the Antidumping Code. It was not explicitly included in the Subsidies Code, but was covered in a ministerial declaration by the negotiators. The U.S. Government in the Statement of Administrative Action should state that panels must defer to reasonable interpretations of U.S. administering agencies on subsidies or the Administration will not accept the results of the panel ruling.

Financial Contribution: The Code defines subsidies in terms of "financial contribution," which if narrowly interpreted might exempt certain indirect government actions. A clarifying definition should be included in our implementing legislation.

Greenlighted Subsidies: The Subsidies Code would greenlight several types of subsidies. Since subsidy dollars are fungible, this provision will most likely benefit certain countries which have traditionally provided support to individual companies and industries, to the detriment of U.S. industries. The Code provides that this provision will terminate after five years, and Congress in the legislation should terminate the provision after five years as well.

In respect to both antidumping and subsidies, our own statutes must be strengthened to the maximum extent feasible--consistent with the new Codes--and provision should be made to compensate firms injured by dumping through anti-dumping duty collections, and to firms injured by foreign subsidies through countervailing duty collections.

Finally, as Congress considers implementing legislation, it should pave the way for negotiations leading to the establishment of a GATT Working Party committed to addressing unfair labor conditions in member countries--a goal which was originally sought by the U.S. government in 1988 and which was reiterated by President Clinton following his meeting with European Union leaders in January, 1994.

I would now like to turn to my colleague, Albert Moore, President of the Association for Manufacturing Technology, who will discuss the issues of Section 301 and Intellectual Property.

STATEMENT OF ALBERT W. MOORE, PRESIDENT, ASSOCIATION FOR MANUFACTURING TECHNOLOGY, ON BEHALF OF THE LABOR/INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. MOORE. Thank you, Mr. Chairman.

The presence of you and your colleagues in Geneva during the negotiations was a major factor in the removal from the Dunkel text of some of its most egregious emasculation of U.S. trade laws. But, as Howard has just indicated, many questions still remain and questions that are left up to you to resolve in the implementing legislation.

For example, it is the common understanding of most foreign countries, no matter what we would like to believe or what we would like to have happen, that they have negotiated an agreement that neutralizes the ability of the United States to use section 301 effectively.

The implementing legislation you adopt must allow our government to use section 301 to encourage Japan and other countries that unfairly close their markets to U.S. products to stop their unfair trade practices. In the industry of machine tools, for instance, in 1992, the world's seven largest machine tool markets imported an average of 42 percent of their machine tool consumption. The largest market in those seven were Japan. They imported less than 10 percent.

Our machine tool trade imbalance with Japan has hovered around \$1 billion ever since 1985. Even more disturbing is the fact that the Japanese transplants in the United States have imported their discriminatory procurement system to our shores and that system has extended beyond the acquisition of components like automobile parts to the acquisition of capital equipment.

One of the most important challenges before you, as you craft the implementing legislation, is how to strengthen section 301 in light of the GATT, so that it can be effectively used to persuade Japan to stop the systematic unfair closure of its domestic market and its transplants to American machine tools and other American products.

You should provide a right of private parties directly affected by dispute settlement cases to be present throughout the proceeding, to have access to all relevant documents, and, where appropriate, to present documents on their own behalf. There should also be provision for an independent review process to judge the fairness and effectiveness of the dispute resolution process on a continuing basis. Congress should play a leading role in such a review.

Neither the results of international negotiations nor the decisions of dispute settlement panels, if in conflict with existing U.S. law, should be given effect without special approval by you through separate implementing legislation.

Provision must be made for the ongoing collection of information on the openness of foreign markets.

Priority attention must be given to solving chronic trade imbalances which stem from foreign market closure, anticompetitive practices, subsidies and industrial legislation.

For key sensitive areas, such as textiles and apparel, and autos and auto parts, trade liberalization should be conditioned upon reciprocal market access opportunities abroad.

Finally, intellectual property protection must be assured through the adoption of an effective revision of section 337 of the 1930 Tariff Act, and by a new special 301, so that the infringement of intellectual property rights can be discouraged and countered.

We have prepared our written statement. Those are my oral comments, Mr. Chairman.

[The prepared statement follows:]

**TESTIMONY OF ALBERT W. MOORE
PRESIDENT OF THE ASSOCIATION FOR MANUFACTURING TECHNOLOGY
ON BEHALF OF THE LABOR/INDUSTRY COALITION FOR INTERNATIONAL TRADE**

**BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 1, 1994**

Let me add my thanks for the permission granted LICIT by the chairman to be represented by two of us, in behalf of our coalition.

Three months ago when Howard and I last appeared before you, I recounted the Herculean efforts of our industry to restore itself to competitiveness during the seven years the machine tool VRAs were in effect. I urged you that you work with our negotiators in Geneva to assure that U.S. trade laws could continue to provide an effective tool for opening markets that are unfairly closed to U.S. products and an effective remedy for American victims of foreign unfair trading practices. I told you that failure to do so would leave my industry--the machine tool industry--and all American manufacturers and their workers in a highly vulnerable position.

Your presence in Geneva during the negotiations was a major factor in the removal from the Dunkel texts of some of its most egregious emasculation of U.S. trade laws. But--as Howard indicated--many questions remain now that the negotiations have been completed--questions that are left for you to resolve in the implementing legislation.

For example, it is the common understanding of most foreign countries that they have negotiated an agreement that neutralizes the ability of the United States to use Section 301 effectively. For this reason, we urge that new and effective measures should be devised to provide leverage to open foreign markets, and provide a remedy, through Section 301 or other means, against practices which are not subject to adequate disciplines under the new international trade rules.

The implementing legislation you adopt must allow our government to use Section 301 to encourage Japan and other countries that unfairly close their markets to U.S. products to stop their unfair trade practices. Permit me to share with you my own industry's experience. In recent years, our industry has exported about 30% of our output. In 1992, the world's seven largest machine tool markets imported an average of 42% of their machine tools. Japan imports only 10%. By contrast, we imported 46%--Germany 38.5%--and France 72%.

Our machine tool trade imbalance with Japan has hovered around \$1 billion per year since 1985. (The highest imbalance in this period was \$1.26 billion in 1989; the lowest was \$781 million in 1992, but 1992 exports to Japan were actually less than in 1989.) Even more disturbing is the fact that Japanese transplants in the U.S. have imported their discriminatory procurement system to our shores and that this discriminatory procurement has extended beyond the acquisition of components to the acquisition of capital equipment.

The fact is that many Japanese companies, regardless of their location, systematically restrict their machine tool purchases to Japanese products. It is one thing for the Japanese Kieretsu system, operating in Japan, to effectively freeze U.S. machine tools out of the Japanese market; it is quite another for the Japanese transplants to freeze U.S. machine tools out of a significant portion of the U.S. market by importing the Kieretsu system to America.

One of the most important challenges before you as you craft the implementing legislation is how to strengthen Section 301 in light of the GATT agreement--so that it can be effectively used to persuade Japan to stop the systematic unfair closure of its domestic market and its transplants to American machine tools and other American products.

Your job will be made more difficult by the fact that, for the first time, GATT dispute settlement compulsory for GATT violations and other GATT-related issues and will be binding on all parties. For this reason, the dispute settlement process should be implemented in a manner which maximizes its effectiveness against foreign unfair trade practices. This should include provision of a right of private parties directly affected by dispute settlement cases to be present throughout the proceedings, to have access to all relevant documents, and where appropriate to present documents on their own behalf. There should also be provision for an independent review process to judge the fairness and effectiveness of the dispute resolution process on a continuing basis. Congress should play a leading role in such a review.

Neither the results of international negotiations nor the decisions of dispute settlement panels, if in conflict with existing U.S. law, should be given effect without special approval through separate implementing legislation.

To make better use of the market-opening tools referred to above, provision must be made for the ongoing collection of information on the openness of foreign markets.

Priority attention must be given to solving chronic trade imbalances which stem from foreign market closure, anti-competitive practices, subsidies and industrial targeting.

For key sensitive areas, such as textiles and apparel, and autos and auto parts, trade liberalization should be conditioned upon reciprocal market access opportunities abroad.

Finally, a word about intellectual property protection. Some progress was made in protecting U.S. firms against the theft of intellectual property in the Uruguay Round, but the potential protection could be lost through the weakening of our ability to use Section 301. Intellectual property protection must be assured through the adoption of an effective revision of Section 337 of the 1930 Tariff Act, and by a new Special 301, so that the infringement of intellectual property rights can be discouraged and countered.

Chairman GIBBONS. Thank you very much.

I listened very carefully to what you had to say. I do not have any vigorous disagreement with any of it. I think you have all hit the nail on the head. Of course, we invite you to follow this very closely, as we begin to implement it, and we would appreciate having your suggestions as we go along.

Mr. SAMUEL. Thank you very much. We appreciate that offer and we will be more than pleased to comply with your request.

Chairman GIBBONS. Thank you very much.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I, too, want to thank you both for your testimony. It is very helpful. I want to comment on just one paragraph, the next to the last paragraph of your testimony, Mr. Moore, where you said that a key sensitive area such as textile and apparel and auto and auto parts trade liberalization should be conditioned upon reciprocal market access opportunities abroad.

I must say I could not agree with that more. When Ambassador Kantor was here, we talked about that specifically as related to the textile and apparent industry, which I am most familiar with because it is an industry that is in my own district, and the fact that there were a number of countries where we have not yet achieved a satisfactory market access agreement. The only way we will achieve that is to withhold certain liberalizations of trade in this country, which those countries are very interested in trading with us, but very reluctant to trade with us on a reciprocal basis.

In the textile business, India is an example of a country that last year exported to us over 1 billion dollars' worth of goods, and yet we literally had nothing that was allowed to go to India, where they have a population of about 175 million middle-class people who could buy our goods. So I think this is an extremely important piece of this GATT and that we must ensure that it becomes a part of the Final Agreement.

Thank you very much for your testimony and your insight.

Mr. SAMUEL. Thank you.

Mr. MOORE. Thank you.

Mr. PAYNE. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you very much. We appreciate your coming.

We will go next to a panel consisting of the Coalition of Service Industries, Inc., the International Intellectual Property Alliance, and the Intellectual Property Committee, Mr. Heeter, Mr. Lackritz, Mr. Smith and Mr. Hackman.

We will go first to Mr. Heeter.

STATEMENT OF CHARLES P. HEETER, JR., CHAIRMAN, TRADE TASK FORCE, U.S. COALITION OF SERVICE INDUSTRIES, INC., AND ASSOCIATE PARTNER, ARTHUR ANDERSEN & CO., S.C.

Mr. HEETER. Good morning, Mr. Chairman.

I have to say this is one of the quickest hearings I have seen on trade recently. We seem to be moving right along through the witnesses.

Chairman GIBBONS. You know, I have been thinking about that myself. It is not that I desire to sit here all day, but I want to listen to you and—

Mr. HEETER. Everybody is in agreement that it is a good agreement, I guess that is what I would conclude.

Chairman GIBBONS. I think that is it. I think that is it. I really believe it is. It is not everything that I wanted, and I am not sure I agree with all of it, but on balance it is a good agreement.

Mr. HEETER. My name is Charles Heeter. I am an associate partner with Arthur Andersen & Co., and I am here representing the U.S. Coalition of Service Industries. With me is Marc Lackritz, who will be representing the Coalition's Financial Services Group, and I am going to make some general comments on the services agreement, how it affects the broad range of service industries, and Marc is going to focus on financial services industries in particular.

Since its founding 12 years ago, the Coalition of Service Industries has been a leading advocate of a comprehensive, effective global trading regime for service industries, one that assures open markets remain that way and markets that are now closed are pried open.

Achieving this objective is clearly in the interest of our member companies, but we believe it is also in the national interest. Services now account for 70 percent of national economic output and almost 80 percent of employment. When the numbers are in for 1993, I believe they will show a \$60 billion services trade surplus, bringing to \$240 billion the cumulative 5-year total trade surplus in services.

While that surplus reflects the success of the Citibanks, the American Expresses, the AT&Ts and, indeed, the Arthur Andersens of the world, it also includes the exports of thousands of smaller companies selling advertising, consulting, education and training, repair and maintenance, software, computer, travel and many, many, many, many more services. The ability to continue selling abroad and to expand our markets around the globe will pay important dividends to the Nation in the years ahead.

Mr. Chairman, the Coalition of Service Industries is pleased to endorse the new General Agreement on Trade and Services and the other provisions of the Uruguay round package affecting service industries. We congratulate Ambassador Kantor and his terrific team of negotiators for the enormous effort they put in over the last year, and we congratulate you and the members of your subcommittee for all the work that you have done to assure that many of the goals we set out at the beginning of this round were actually accomplished.

We believe that the new services agreement has tangible commercial value for our companies. That is not to say that we believe it does everything or that we got everything. Far from it. What we got is certainly worth having. In some ways, the General Agreement on Trade and Services [GATS] is more than we honestly expected.

It was not clear at all at the outset of the negotiations that the United States could convince more than 100 countries to go beyond cross-border trade, to include investment and national regulatory regimes within the scope of the agreement. The General Agreement

on Trade and Services clearly gives services a stature in the global trading system equal to that of merchandise trade.

In other ways, however, the agreement contains less than some of our leading service industries need in terms of market access and national treatment. The source of this paradox, the good and the bad, if you will, is the structure of the agreement itself. The effectiveness of the GATS depends on the interplay of the framework of rules and disciplines on the one hand and country schedules of commitments to apply them to specific industries on the other.

The rules themselves are well drafted and comprehensive. They cover important matters, including transparency, domestic regulations, recognition of professional qualifications, monopolies, payments and transfers, market access and national treatment.

The problem is that, for the most part, these rules do not apply until countries have made specific commitments to abide by them and apply them on a sector-by-sector basis. There are some exceptions, of course. For example, the rule on transparency, which applies across the board to all countries, all services from the beginning.

Assessing the effects of the agreement on an industry-by-industry basis is a fairly complex matter, as you can imagine, requiring the knowledge of each industry's problems, market conditions, the relevant rules and the commitments made by the hundred-and-some countries that participated in this round. I do not plan on giving you a detailed assessment—I think we would be here for the rest of the day if I began that.

But let me give you some examples of the effects of the agreement, at least in general terms. For small- and medium-size companies just breaking into business overseas, the agreement's across-the-board rule on transparency may have significant value. These new to market companies often have the most trouble learning the regulatory rules of the game and overcoming the behind-the-scenes arrangements they bring domestic competitors. The transparency rule is well written, very broad, very comprehensive, and we think it will be of significant help to many companies.

Another example, for some industries—my own is a good one—simply scheduling a sector brings into play the most important rules for us, even though market access and national treatment commitments may be kind of skimpy. In our case, it is the rule on payments and transfers. Payment and transfer restrictions have been a major problem in our industry.

What that rule does is provide, in essence, that a country cannot restrict payments in sectors that it has listed in its schedule. I am pleased to say that 50 countries have scheduled commitments on accounting and management consulting, and nearly 60 have done so on computer services, all businesses in which we are very active.

I would also say that these include all but two of the countries in which we have encountered payment restrictions, and those two are not members of the GATT.

Another example: In some cases, standstill commitments can be of considerable value, because they assure open markets will stay that way. Most service businesses, mine included, have seen favor-

able market conditions reversed in more than one country, even since the Uruguay round began.

I will give you a good example: In Turkey, in 1989, 3 years after the round began, they completely reversed their law affecting the accounting profession, which in effect excluded international firms from the market, even though those firms had spent millions of dollars trying to develop a profession in that country.

In other cases, however, businesses require concrete commitments to remove access barriers and to end discriminatory treatment, if they are to enter or grow in certain markets. The absence of these commitments denies the tangible commercial value that companies seek from an international trade agreement. Unfortunately, financial services, basic telecommunications and motion pictures did not obtain sufficient commitments by the end of the round. Thus, the round ended with a substantial agenda of remaining business, but, most notably, continuing negotiations to get real market access and real national treatment in key markets for financial services and basic telecommunications.

Fortunately, U.S. negotiators reserved the leverage of denying MFN treatment to key countries that are not forthcoming in these negotiations. We urge the committee and the administration to provide a lot of support to our negotiators, because those are real industries where the United States has a clear competitive advantage. If allowed to compete in foreign markets, U.S. companies in these sectors will yield tremendous benefits for our own national economy.

In summary, Mr. Chairman, we support the new services agreement as an important milestone, but not because we think we finally reached our destination. It is a good agreement, it has value for U.S. service industries, but there is still a long way to go before markets around the world are as open as ours are here at home.

Thank you very much.

[The prepared statement follows:]

**Testimony of Charles P. Heeter Jr., Associate Partner
Arthur Andersen & Co, SC
on Behalf of the U.S. Coalition of Services Industries, Inc.
before the Subcommittee on Trade, Committee on Ways and Means
United States House of Representatives
on the Trade Agreements Resulting from the Uruguay Round of Multilateral Trade
Negotiations**

Mr. Chairman and distinguished members of the Subcommittee:

Thank you very much for holding today's hearing on the Uruguay Round multilateral trade agreements and for once again affording the Coalition of Service Industries an opportunity to share our views with you. The Subcommittee's attention to the Uruguay Round negotiations since their inception, your active support of the negotiators (most recently in Geneva during the final stages of the Round) and your interest in private sector views of the issues have contributed importantly to the success of the outcome.

My name is Charles Heeter. I am an Associate Partner with Arthur Andersen & Co., S.C., which is the worldwide coordinating unit for Arthur Andersen and Andersen Consulting member firms in 74 countries around the globe.

I am participating in today's hearing as the Chairman of the Trade Task Force of the U.S. Coalition of Service Industries, Inc. (CSI). The Coalition represents a group of large multinational companies engaged in a broad range of service businesses, including business and professional services, financial services, telecommunications, transportation, and travel and tourism. Member companies collectively employ over 1.4 million people and operate in all 50 states, as well as in more than 100 foreign countries.

I also chair the Services Subcommittee of the U.S. Council for International Business and the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13).

Endorsement of the Uruguay Round Agreements

Mr. Chairman, the Coalition of Service Industries is pleased to endorse the new General Agreement on Trade in Services (GATS) and the other elements of the Uruguay Round package affecting service industries. We congratulate Ambassador Kantor and his negotiating team for their enormous effort over the past year to bring the Round to a successful conclusion. This is a bipartisan achievement, and our thanks also go to Ambassadors Hills, Yeutter and Brock.

From its founding some 12 years ago, CSI has been the leading advocate worldwide of a comprehensive and effective global trading regime for services and service providers, one that assures open markets will stay that way and that contributes to market liberalization where trade barriers and discrimination exist. We believe that the new services agreement moves toward the goal that we set out at the time of the Punta del Este gathering that launched the Round -- the agreement must have tangible commercial value for U.S. service companies.

Even those most intimately familiar with our businesses and trade problems, I think, underestimated the enormity of the undertaking to bring multilateral rules and disciplines to services. The task required nothing less than getting 100+ sovereign nations to agree about the treatment of transactions that account for more than half of the world's economic output. This is not hyperbole. It has long been recognized that services "trade" encompasses much more than the \$1 trillion in annual cross-border sales of services. Service businesses depend so critically on the proximity of suppliers and consumers, the very concept of services trade must extend to the right to invest and conduct business in foreign markets. Thus, a services agreement must address direct investment and domestic regulatory problems, in addition to border measures, if it is to meet the test of tangible commercial value.

Seen in this light, the new General Agreement on Trade in Services is a remarkable achievement, comparable in some ways to the creation in 1948 of the General Agreement on Tariffs and Trade itself. It encompasses cross-border transactions, commercial presence or investment, and domestic regulation. This is not to say that the new services trade rules solve all our problems. Far from it. But they do give us a standard of measurement and a process for achieving further trade liberalization, in addition to a standstill in many areas and actual liberalization in a few.

Analysis of the GATS

Let me turn now, Mr. Chairman, to a closer examination of the new services agreement.

The GATS actually has three principal components that must be viewed in relation to each other in order to appreciate how the new agreement will affect any particular service sector. These components are:

1. A framework of rules intended to discipline government regulation and intervention that distort trade and investment in services;
2. A set of schedules in which each country commits itself to applying the rules to specific service businesses, subject to defined exceptions; and
3. A number of annexes and ministerial decisions that supply more sector-specific detail and outline follow-up activities.

I do not intend to get into a detailed analysis or technical discussion of each service business, so my comments will concentrate in a general way on the first two components.

The framework of rules covers the full range of issues identified by CSI's members as trade problems or barriers. Overall the rules are comprehensive and well-drafted. The most important are those concerning:

- most-favored-nation treatment (MFN);
- transparency of laws and regulations;
- exceptions related to economic integration (e.g., free trade areas);
- provisions to assure that domestic regulations do not serve as disguised forms of trade restrictions;
- recognition of operating licenses and qualifications to practice a profession;
- disciplines on monopolies and exclusive service providers;
- international transfers and payments for current transactions, and related rules on balance-of-payments safeguards;
- market access;
- national treatment;
- dispute settlement and enforcement;
- general exceptions related to public morals and public order, human, animal or plant life and health, the prevention of fraud, the protection of privacy, and the equitable and effective collection of taxes; and
- provisions on emergency safeguards, government procurement and subsidies that, in essence, promise further negotiations to develop disciplines in these areas.

While these rules address virtually every issue raised by service businesses, the crucial point to remember is that they must be viewed in connection with the second major component of the agreement, the schedules of commitments. Aside from the procedural and institutional rules, the only truly substantive rules that apply across-the-board without exception are those concerning transparency, economic integration and recognition. (The MFN rule also applies across the board, except that countries are permitted a one-time opportunity to exclude measures from its application.) The application of the other rules is conditioned on countries having made commitments, by sector, in schedules attached to the agreement. These schedules list specific commitments with respect to market access and national treatment, and may include exceptions for measures that deviate from the complete market access and national treatment obligations in the agreement. Once a country has made a commitment on market access or national treatment (of whatever quality or degree of liberalization), the other rules, such as those on domestic regulation, monopolies and exclusive service providers, or payments and transfers, go into effect for that sector with respect to that country's market.

It can well be appreciated then that an understanding of how this agreement affects any particular service sector is a more complex question than is suggested by the asking. It requires a knowledge of each service industry's problems and which rules pertain to them, the intricacies of the schedules and the quality of the commitments, and the market conditions in countries that are making commitments.

Let me cite some examples to show how different industries would assess the results.

- For small and medium-sized companies just breaking into business overseas, the agreement's across-the-board rule on transparency may have significant value. These new-to-market companies often have the most trouble learning the regulatory "rules of the game" and overcoming "behind-the-scenes" arrangements favoring domestic competitors.
- One of the most significant problems my own firm encounters is restrictions on payments and transfers, either of fees for work completed or of shared costs and investments. Thus, one of our main objectives has been to get countries simply to schedule our services. We are less concerned about the completeness of the market access and national treatment commitments because the mere act of scheduling causes the payments and transfers rule to take effect. I am pleased to say that 52 countries scheduled commitments in auditing and accounting, 49 in management consulting, and 57 in computer services, covering virtually every country in which we have encountered the payments and transfers problem.
- In some cases, standstill commitments can be of considerable value because they assure that open markets will stay that way. Most service businesses, mine included, have seen favorable market access conditions reversed in one or more countries even during the course of the Uruguay Round negotiations.
- In other cases, however, businesses, such as financial services and telecommunications, require the direct removal of market access barriers and the reform of regulations that deny national treatment in order to derive tangible commercial value from the agreement.

My purpose is not to review all the schedules of commitments. All 100+ member countries of the new World Trade Organization will submit schedules of commitments and those schedules will touch on all 150 service sectors identified by the GATT Secretariat. One look at these schedules will convince you that the Federal Register reads like a fairy tale in comparison, and their length puts War and Peace to shame! In summary, I would say that a wide variety of service industries will receive a modest degree of benefit from the agreement. Examples include accountants, advertising agencies, computer services, construction and engineering firms, consultants, distribution services, educational services, franchising, maintenance and repair services, research, development and testing services, telecommunications enhanced services, and travel and tourism.

A number of important service sectors, however, are very disappointed by the absence of more meaningful commitments on trade liberalization. Among these are financial services (banking, insurance and diversified firms), basic telecommunications, and audiovisual services. Fortunately, in the case of financial services and telecommunications, U.S. negotiators avoided a situation that would have legitimized market barriers abroad while forcing the United States to maintain an

open market here by extending the market access/national treatment negotiations for about two years.

Future Negotiating Agenda

While CSI believes that the GATS represents an important accomplishment, it is only a point of departure in many ways for additional work. The agreement and related documents provide for further negotiations on:

- trade liberalization in financial services, basic telecommunications, maritime services and the movement of natural persons supplying services;
- additional GATS disciplines on government procurement, safeguards and subsidies; and
- work programs on professional services, as well as on services and the environment.

These negotiations are critical to making the GATS the comprehensive services trade regime sought by the U.S. private sector, and the results could be of significant additional commercial value to the United States. Our objectives remain the same with respect to the outcome; the preservation of market access where it exists and liberalization of access where it is impeded. That is the standard against which we will judge the results.

Conclusion

Mr. Chairman, the Coalition of Service Industries believes the new General Agreement on Trade in Services is a milestone, not a destination. The Uruguay Round has produced a comprehensive set of rules and disciplines and an institutional framework that together give services the same stature as goods in the world trading system. That is an important achievement, and it has taken two decades to win it. But the new GATS does not solve all our trade problems. In fact, in a number of important sectors the results are disappointing.

We hope that Congressional approval of the agreements, which we strongly support, will not be the end of the Subcommittee's interest and involvement in services trade issues. Indeed, success in the follow-up negotiations, which I mentioned previously, will require a clear message to our trading partners that the United States Congress has not lost interest now that the Uruguay Round has ended and remains committed to achieving significant trade liberalization in sectors important to the commercial interests of this country.

Effective application of the rules of the new General Agreement on Trade in Services will help create the conditions under which American service providers can continue to grow and contribute to the national economic well-being.

Thank you very much.

Chairman GIBBONS. Thank you, sir.
Mr. Lackritz, you are next.

STATEMENT OF MARC E. LACKRITZ, PRESIDENT, SECURITIES INDUSTRY ASSOCIATION, ON BEHALF OF U.S. COALITION OF SERVICE INDUSTRIES, INC., FINANCIAL SERVICES GROUP

Mr. LACKRITZ. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Marc Lackritz, and I am president of the Securities Industry Association, but I am appearing here today on behalf of the Coalition of Service Industries' Financial Services Group.

Before I begin, I want to commend Treasury Secretary Bentsen, Trade Representative Kantor, Under Secretary of the Treasury Summers, the entire Treasury and USTR teams, and I might add, Mr. Chairman, the fine work of the subcommittee for the excellent work on behalf of the U.S. financial services industry.

Everyone involved in this effort worked long and hard and I think creatively to secure a solid liberalizing agreement for financial services, and they consulted with the Financial Services Group on a regular basis. We greatly appreciate their efforts and consider the round to have produced a very useful outcome for financial services.

It is neither the success that we envisioned at the beginning of the talks 7 years ago, nor is it the failure that we feared 6 months ago. Our goals in these negotiations never wavered. We wanted market access, national treatment, and equivalent competitive opportunity in commercially significant markets. We believe that an open trading system for financial services will bring economic benefits to newly emerging economies, while increasing jobs here at home, as well as the trade surplus in services.

Financial services account for more than 6 percent of the gross domestic product, and U.S. financial services firms are the most innovative in the world. Most importantly, however, the provision of financial services, whether raising capital, managing risk, providing advice on investment or making loans for consumer purchases, reverberates throughout the remaining 94 percent of the economy.

Our financial services firms' capabilities offer consumers, businesses and government entities the most cost-effective access to funds worldwide, and we are the world's leader in providing financial services, the most innovative industry in the world.

Obviously, discrimination in foreign markets diminishes the competitive position of the entire financial services sector, and let me give you a couple of examples of where that is occurring around the world. In Korea, U.S. advisors are not permitted to manage Korean mutual funds or advise other Korean clients, while U.S. diversified financial services firms are excluded from the credit finance market.

In India, foreign insurance companies are prohibited from life and nonlife insurance activities altogether. And in Japan, U.S. broker-dealers are prohibited from managing large pools of savings in Japan's pension fund system, and our investment bankers have not had access to corporate bond underwriting in Japan.

Clearly, the status quo is unacceptable. As the negotiations came to a close last December, it became clear that most of the commer-

cially important countries that we had focused on, Japan, Korea, the ASEAN nations and the larger Latin American countries did not intend to liberalize their financial markets. We are pleased that the U.S. negotiating team refused these inadequate offers, and opted instead to extend the negotiations for 2 more years.

Between now and the entry into force of the agreement on July 1, 1995, the United States will be able to use trade remedies that are already law or will be able to enact and use new trade laws. Application of these remedies may be used against specific countries, and the remedies do not have to be applied on an MFN basis. During this period, the United States will continue bilateral discussions for trade liberalization.

Following the entry into force of the agreement, the U.S. MFN exemption for financial services will be suspended for 6 months. During the suspension period, the United States will not be able to use any bilateral tools against specific countries, and MFN treatment must be applied.

Finally, the suspension will automatically terminate at the end of 6 months and the MFN exemption will stay in place if the market access commitments continue to be insufficient.

Our goal for this initial phase of the negotiations remains as it has been from the outset, liberalization of trade in financial services, a reduction of existing barriers to trade, and equivalent competitive opportunity in commercially important markets.

Secretary Bentsen has outlined three principles the United States will use to guide these negotiations, which we fully support. First, we will look for agreements that offer market access and national treatment; second, no provocative action will be taken against foreign firms operating in the United States during the period of negotiation. Moreover, the U.S. Government will not unreasonably refuse access to countries already here. Finally, the United States will not permit other nations to enjoy the right to discriminate against U.S. firms in their markets, while they enjoy the ability to expand in ours.

The financial services industry has also begun to look at legislative tools which would serve to encourage countries toward liberalization. The fair trade in financial services legislation currently under consideration in both the House and Senate contains just such an approach. We support this concept. And while the bills differ, we believe they are constructive in their approach and we would encourage the debate to move forward and get resolved.

In conclusion, we have worked diligently over the years for greater market access. We do not want to close the U.S. market to anyone. We have a chance over the next 2 years to achieve our goal, and we are optimistic and enthusiastic. We look forward to working with the U.S. negotiators and the Congress to assure that we secure a financial services agreement that reduces existing barriers to trade and results in real benefits to U.S. financial services firms. We cannot afford to settle for less.

Thank you very much.

[The prepared statement follows:]

**STATEMENT OF MARC E. LACKRITZ
PRESIDENT, SECURITIES INDUSTRY ASSOCIATION
ON BEHALF OF
THE COALITION OF SERVICE INDUSTRIES' FINANCIAL SERVICES GROUP**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the outcome of the Uruguay Round for financial services.

I am the President of the Securities Industry Association, which represents over 700 securities firms throughout North America. The securities industry and our capital markets play a critical role in the U.S. economy, and we, along with our colleagues in banking, diversified finance and insurance industries, have worked diligently to open markets abroad for our products.

I am appearing here today on behalf of the Coalition of Service Industries' Financial Services Group (FSG). Some five years ago, the FSG brought together the various financial services industries to speak with one voice in pursuing trade liberalization. The Securities Industry Association is an active member of the FSG, as are many of America's largest and most successful financial services companies, and a variety of the associations that represent them.

This is our first opportunity to review for the record how the financial services industry fared in the Uruguay Round. We consider the Round to have produced a useful outcome for financial services. It is neither the success we envisioned at the start of the negotiations seven years ago, nor is it the failure we feared six months ago.

My fellow FSG colleague, William Hawley with Citicorp, testified before your Subcommittee in November of last year. In his testimony, he reviewed our concerns about a lack of progress with so little time remaining, and he noted our fear that negotiators would be tempted to agree to a financial services package that did not achieve real market access and equivalent competitive opportunity for U.S. firms. At that time, there were no market access commitments from any of our commercially important trading partners that removed even one barrier to trade. Agreeing to such an inadequate package would have had the effect of locking our market open while allowing the markets of others to remain closed, leaving us worse off than if there had been no agreement at all.

I am pleased to say that the U.S. negotiating team rejected the package, and the financial services negotiations were extended for two years to allow the opportunity to achieve the market access we believe to be so critical to our growth abroad. In addition, we are pleased that the financial services negotiators were able to retain the U.S. exemption from most-favored-nation (MFN) treatment, which was necessary in the absence of real liberalization.

Before I discuss the agreement in depth, I want first to commend Treasury Secretary Bentsen, the U.S. Trade Representative Mickey Kantor, Under Secretary of the Treasury Larry Summers and the entire Treasury and USTR teams for their fine work on behalf of the U.S. financial services industry. They worked long, hard, and creatively to secure a solid liberalizing agreement for financial services, and consulted with the Financial Services Group regularly. We greatly appreciate their efforts and look forward to working with them over the next two years to conclude, finally, a package that opens markets to all financial services companies.

The Financial Services Group collectively, and all of its members individually, have sought an agreement that achieved market access and the opportunity for all financial services firms to compete on a fair and equal basis. Where foreign markets were already open, we sought assurances that

they would stay that way. And where markets were closed or discrimination existed, we wanted those obstacles removed. Our goals never wavered - market access, national treatment, and the liberalization of existing barriers to international financial services operations.

We believe that an open trading system for financial services will bring economic benefit to newly emerging economies while increasing both jobs here at home and the services trade surplus. Given that the U.S. accounted for less than one quarter of the world's economic output last year, fair and open access to foreign markets is essential for our long-term growth.

I think it is wise to use every opportunity to highlight the economic success story of our sector. As you know, the U.S. service sector employs 80 percent of the U.S. workforce, creates 70 percent of the Gross Domestic Product, and ran a record \$61 billion trade surplus in 1992. That surplus offset by two-thirds our \$96 billion deficit in merchandise. Financial services alone is more than 6 percent of GDP, and U.S. financial services firms are among the most innovative and successful in the world. They have helped create the most liquid, open, honest and fair capital markets. No other country in the world has developed a financial marketplace that is as strong, resilient, efficient and accessible as the U.S. capital markets.

Most importantly, however, the provision of financial services -- whether raising capital, reducing risk, providing advice on an investment or making loans for consumer purchases -- reverberates throughout the remaining 94 percent of the economy. Financial services firms offer consumers, businesses and government entities the most cost-effective access to funds world-wide.

One of the U.S. financial services industry's most important functions and biggest strengths is to act as intermediary between the suppliers of funds -- both individual and institutional investors -- and those in need of capital -- business and government. A strong and vital financial services industry is the fuel that runs the economic engines and creates and maintains jobs. Secretary Bentsen recognized that fact and emphasized the importance of financial services to the economy in his recent trip to Asia. He made some important headway in focusing the financial services debate in that region of the world, and we are grateful for his efforts.

Despite the importance of service industries to both the U.S. and the global economy, this enormous area of international commerce has operated almost entirely outside any multilateral trade regime. As a result, the governments of many countries have felt free to discriminate against U.S. companies seeking to do business in their national markets, and in some cases exclude foreign firms altogether.

While the Financial Services Group represents a broad spectrum of financial services firms, and therefore has varying concerns in these negotiations, discrimination in foreign markets negatively affects the competitive position of the entire sector. For example, in Korea, U.S. advisors are not permitted to manage Korean mutual funds or advise other Korean clients, while U.S. diversified financial services firms are excluded from the credit finance market. In India, foreign insurance companies are prohibited from engaging in both life and non-life insurance activities. Although the commercial banking industry has acknowledged that it receives national treatment in Japan, other financial firms have specific issues, such as the prohibition from managing the bulk of the pension fund market.

Moreover, while the ability to enter the market presents one set of problems, non-tariff barriers create an environment which reduces the U.S. financial service sector's ability to compete once established. These non-tariff barriers take such forms as high start-up costs, vague regulations and impediments to introducing innovative products. Clearly, the status quo is unacceptable.

The FSG saw the Uruguay Round negotiations on financial services as the means by which international disciplines could be brought to bear on our industry. With the predictability established for business by multilateral rules and binding commitments, our companies could establish a presence in commercially important markets and sell our services competitively.

The Uruguay Round achieves just part of this goal: it establishes rules and disciplines for service industries, including financial services, however, it falls short of securing market access commitments. While some have tagged this as signaling a failure of the negotiations, we see it another way.

As you have heard described by my colleague, Charles Heeter, the services agreement consists of a framework of rules, a set of schedules describing commitments and defining exceptions, and a series of annexes, one on financial services.

The Financial Services Group was pleased when the draft final agreement was produced some two years ago, as it comprehensively set forth the rules and principles for a services agreement - the framework of rules. It gave us a basis from which to pursue market access commitments, and we vigorously encouraged negotiators to pursue those commitments. In the waning days of the negotiations last December, it became clear that most of the commercially important countries we had focused on did not intend to liberalize access to their finance markets. At best, most market access offers constituted a standstill; many others fell short of even this inadequate commitment. Our support for the market access negotiations was expressly based on the representations of U.S. negotiators that the United States would exercise its right under the GATS to prevent protectionist countries from taking advantage of open U.S. financial markets, in the event that market access negotiations failed. While standstill agreements are useful and even necessary, they do not constitute liberalization, and therefore we found them unacceptable as the sole basis for an agreement.

The U.S. negotiating team refused to accept a clearly unbalanced set of offers, and opted instead to continue negotiations for two more years. In addition, and perhaps most importantly, the U.S. qualified its own commitments concerning the future openness of our market, which in our view maintains important negotiating leverage.

In short, between now and the entry into force of the agreement (July 1, 1995), the United States will be able to use trade remedies that are already law or will be able to enact and use new trade laws. Application of these remedies may be used against specific countries, and the remedies do not have to be applied on an MFN, or most-favored-nation, basis. During this period it is expected that the U.S. will continue bilateral discussions for trade liberalization.

Following the entry into force of the agreement, the U.S. MFN exemption for financial services will be suspended for six months. During the suspension period, the U.S. will not be able to use any bilateral tools against specific countries and MFN treatment must be applied. The suspension will automatically terminate at the end of six months.

The U.S. industry's goal for this phase of the negotiations remains as it has been: liberalization of trade in financial services, a reduction of existing barriers to trade, and equivalent competitive opportunity in commercially important markets. If the U.S. is not satisfied with the progress of the negotiations at the end of the suspension period, the MFN exemption will remain in place.

The FSG's immediate objectives now are twofold:

1. To assure that there is no misunderstanding by our trading partners about what the U.S. goals are for the negotiations.
2. To develop a negotiating framework that encourages countries to come forward with market access commitments.

The FSG is concerned about the means of motivating countries to make commitments. We need a strategy, and we obviously need better carrots and bigger sticks than were available to U.S. negotiators over the last few years.

Unfortunately, during the last phase of the negotiations there was an attempt to reformulate the goals of the negotiations, and we began hearing that in fact, liberalization of trade barriers was never an objective of the Uruguay Round services negotiations. As such, we believe that it is very important for the U.S. to articulate clearly and unambiguously what our goals are over the next two years.

In a speech to the Thai Bankers Association during his trip to Asia, Secretary Bentsen outlined three principles the U.S. will use to guide the negotiations. First, the U.S. will look for agreements that offer market access and national treatment. Full access and national treatment here will in turn be offered to countries that accord the same treatment to our firms operating in their markets.

Second, no provocative action will be taken against foreign firms operating in the United States during the period of negotiation. The Secretary offered further assurance that the U.S. government will not "unreasonably refuse access" to countries not already here.

Finally, the U.S. will not permit other nations to retain the right to expand in our market while they discriminate against U.S. firms in their markets.

We support Secretary Bentsen's assurances that the legitimate concerns of developing countries should be accommodated wherever possible, and we believe that NAFTA provides a good model of transition periods and phase-in timetables for that. The treatment of financial services firms under NAFTA was carefully crafted to take into account Mexico's desire for a phased approach to market penetration and the U.S. business community's need for predictability.

The financial services industry has also begun to look at legislative tools that would serve to encourage countries which are not according equivalent competitive opportunity for U.S. firms toward liberalization. The Fair Trade in Financial Services legislation currently under consideration in both the House and the Senate has the potential to be useful for us and we would encourage the debate to move forward.

We believe that in order to avoid any misunderstanding on the part of our trading partners, and to ensure that the Administration has the tools

available to encourage market access commitments, the implementing legislation should clearly reflect the industry's goals.

In conclusion, our industry supports liberalization. We have worked diligently over the years for greater market access - not less. We do not want to close the U.S. market to anyone. But we refuse to support an agreement that locks our market open while many others are permitted to retain their closed markets.

We have a chance over the next two years to achieve our goal, and we are optimistic and enthusiastic. We truly look forward to working with the U.S. negotiators, and with you to assure that we secure a financial services agreement that reduces existing barriers to trade and results in tangible commercial value to U.S. financial services firms.

We cannot afford to settle for less.

Thank you.

Chairman GIBBONS. Thank you, Mr. Lackritz.
Mr. Smith.

**STATEMENT OF ERIC H. SMITH, EXECUTIVE DIRECTOR AND
GENERAL COUNSEL, INTERNATIONAL INTELLECTUAL
PROPERTY ALLIANCE**

Mr. SMITH. Mr. Chairman, first of all, let me also compliment you again on the efficiency of this hearing and, in particular, for your personal work in ensuring that the agreement that we do have is a good one. This committee has been the watchdog of this agreement, and we very much appreciate it.

Mr. Chairman, my name is Eric Smith, and I am executive director of the International Intellectual Property Alliance. Our alliance consists of 8 trade associations that collectively represent over 1,500 companies in the computer software, motion picture, music and recording and book publishing industries in the United States.

These industries' principal objective internationally is to see that all foreign markets are open and free of piracy. Piracy is our No. 1 collective trade barrier and results from the unwillingness of foreign governments to adopt good laws and to enforce them vigorously. Mr. Chairman, we estimate that we lose from \$15 to \$17 billion annually due to inadequate copyright protection and enforcement around the world.

The TRIPs agreement in the new WTO agreement establishes the baseline of protection and standards of enforcement that our companies need to carry forward the job of reducing piracy to minimal levels around the world. Our eight member associations are unanimous in their support of these standards of protection and enforcement, and we hope, through the dispute settlement process and the real threat of cross-sectoral retaliation, we will be able to complete the task of lifting the level of protection and enforcement worldwide up to modern and necessary levels.

As you know, Mr. Chairman, on the weekend before the conclusion of the most recent negotiations, there were basically only a very few critical issues left open for resolution. One of these issues, the so-called entertainment or audiovisual issue, was actually two issues. The first involved the services agreement and involved whether the European Union would be willing to cast off its severe market access barriers to the U.S. audiovisual industry. These barriers heavily restrict entry, particularly in the context of the new technologies such as cable services and satellite broadcasts.

The other issue involved the TRIPs agreement and whether, again, the Europeans would be willing to extend full national treatment to all U.S. rights holders in various levy systems and in connection again with new technologies, particularly those affecting the recording industry.

Mr. Chairman, Ambassador Kantor was joined by the President personally seeking to make progress on both these issues. They sought until the final moments of the negotiations to move the Europeans off their intransigent protectionist stance, but in the end were unable to do so.

The result is that, on the intellectual property issues, we are left with an inadequate national treatment provision which preserves in part the ability of the Europeans and others to discriminate

against our works, and unless we are able to find a remedy in other forums, will cause continued losses to the United States. Of course, the continuation of the European Union's quotas was a devastating blow to our movie industry.

These flaws, plus the overly long transition periods, have cast somewhat of a pall over our otherwise positive reaction to the agreement. I would note for the record, for example, that the software industry is very pleased to have enshrined in an international agreement for the first time that computer programs must be protected as literary works. Already, however, our colleagues in Japan appear ready to seek exceptions to this rule.

A word about the transition problem: This is not an abstract issue. Most of the piracy we experience occurs in developing countries that are given an extra 4 years, and in some cases up to 10 years in the case of least developing countries, to comply with the agreement. The United States simply must not permit our key developing country trading partners to take advantage of this transition period, and all the tools available to our government must be brought to bear to prevent it.

The reason is simple: USTR has been negotiating with these countries for several years now. Through the great work of Mickey Kantor and before him Carla Hills, most are very close to making all the required legislative changes and have set about on a course of enforcing their laws, so that we will soon have real markets in these countries.

We took a look at just 10 of these countries more or less at random, Thailand, India, South Korea, the Philippines and Indonesia in Asia, Egypt, Turkey and Poland in Europe and the Middle East, and Brazil and Venezuela in South America. These are all GATT members and all will be WTO members.

Mr. Chairman, we lose over \$1.7 billion per year due to piracy in these countries right now. If they are allowed to delay their implementation of better protection and they are not pressured unmercifully by the United States bilaterally, we will lose an additional \$7 billion before the year 2000, when the agreement finally and literally goes into effect for these countries. This is just too many U.S. jobs in productive industries. There is no need for it, there is no excuse for it.

We believe through an aggressive stance by the administration and a careful inventory of carrots and sticks available to our trading partners, the impact of the deficiencies in the agreement can be remedied, or at least mitigated. But we must seek out all tools—not just trade tools. We must begin to coordinate U.S. economic and trade policy to reach one objective, ensuring that markets are pried open so that our productive companies and their employees can compete fairly and effectively.

Our industries are some of the most productive in this economy, as some of the statistics in our written testimony demonstrate. For example, copyright-based companies employ new workers at three times the rate of the economy as a whole. In 1992, we estimate foreign sales of close to \$40 billion. Most of our industries earn half their revenues from foreign trade.

Mr. Chairman, we want the Congress to reauthorize the GSP Program, which gives the United States leverage in a WTO world,

where old sanction remedies are not as easily available. Special 301 must continue to be used as it has in the past, and in our view there is nothing in the WTO agreement to prevent it. Other government benefits should be denied to countries which unfairly take advantage of the transition period or continue to deny us national treatment.

After July 1, 1995, in the case of national treatment violations, and July 1, 1996, for other violations, cases should be filed against developed countries not in compliance. We hope that these tough actions will mitigate the deficiencies in the agreement.

Again, we appreciate your personal interest in this matter and your attention to this agreement overall.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

Testimony
of

Eric H. Smith
Executive Director and General Counsel
International Intellectual Property Alliance

Representing

The International Intellectual Property Alliance

Before

The Subcommittee of Trade
of
The Committee on Ways & Means
United States House of Representatives

February 1, 1994

Mr. Chairman and Members of the Committee:

I am Eric Smith, Executive Director and General Counsel of the International Intellectual Property Alliance. We greatly appreciate the opportunity to present the views of the U.S. copyright-based industries on the just concluded Final Act embodying the agreement of the 117 members of what soon is expected to become the new World Trade Organization (WTO). In particular, our views will be limited to a discussion of a critical part of final Uruguay Round package, the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, the so-called TRIPS Agreement.

We will also provide our preliminary views on the creation and implementation of a post-Uruguay Round strategy to correct some of the unfortunate deficiencies in the Agreement and to ensure the continuation of an aggressive and effective U.S. trade policy to reduce the still massive losses to the U.S. economy, and to U.S. job growth from the scourge of piracy and other unjustifiable barriers to market access affecting these industries.

The IIPA is comprised of eight trade associations that collectively represent the U.S. copyright-based industries -- the motion picture, recording, computer software and music and book publishing industries. Our member associations are:

American Film Marketing Association (AFMA);
Association of American Publishers (AAP);
Business Software Alliance (BSA);
Computer and Business Equipment Manufacturers Association (CBEMA);
Information Technology Association of America (ITAA);
Motion Picture Association of America (MPAA);
National Music Publishers' Association (NMPA); and
Recording Industry Association of America (RIAA).

These industries represent the leading edge of the world's high technology, entertainment and publishing industries and are among the fastest growing and largest segments of our economy.¹

¹ In a report released on November 4, 1993 (when IIPA last testified before this Subcommittee) entitled "Copyright Industries in the U.S. Economy: 1993 Perspective" which was prepared for the IIPA by Economists Incorporated, we outlined the importance of these industries to the U.S. economy. For example,

- The core copyright industries accounted in 1991 for over \$206 billion in revenues from their copyright-related activities, or 3.6% of the U.S. GDP.

Mr. Chairman, IIPA testified before this Subcommittee in January 1992 following the issuance of the "Dunkel text" and again in November 1993 immediately preceding the final round of the just-completed negotiations. Our views then were that an acceptable agreement in the GATT would go far to aid in reducing the severe losses suffered by the U.S. from inadequate levels of protection and enforcement of U.S. copyrighted works around the world, but that the Dunkel text contained certain key deficiencies that would allow our trading partners to continue to discriminate against our copyrighted products or fail to take remedial action to end continuing piracy of those products. We highlighted, in particular, the inadequate provisions on national treatment and the long transition periods that could permit the multiplication of losses to our economy until the Agreement became legally binding on those countries talking advantage of the transition. IIPA has estimated that the U.S. economy was already losing \$15-17 billion in 1992 due to piracy outside this country.

IIPA ASSESSMENT OF THE FINAL TRIPS AGREEMENT

Today we must unfortunately inform the Subcommittee of our grave disappointment that these deficiencies were not corrected in the final TRIPS Agreement. While none of our members will seek to oppose the WTO Agreement, many of them will not be able to warmly endorse it. However, on careful balance, our members believe that, with the help of a resolute U.S. bilateral trade policy on intellectual property, the impact of the deficiencies in the TRIPS and GATS Agreements can be mitigated.

Despite this disappointment, the final agreement contains many positive elements. The Agreement:

- incorporates the high levels of protection in the Berne Convention, in practice ensuring that the over 117 GATT members will join the latest text of Berne;
- covers many of the critical issues faced by our industries as a result of recent changes in technology following the last revision of the Berne Convention in 1971 including
 - protection of computer programs as literary works under the Berne Convention;
 - protection for electronic databases;

¹(...continued)

In 1991, the total copyright industries accounted for \$325 billion in value added, or about 5.6% of GDP.

- These core copyright industries grew at close to three times the rate of the economy as a whole between 1977 and 1991 (4.2% vs. 1.5%). Total copyright industry employment in 1991 stood at 4.8% of all employment (5.5 million).
- These industries employed new workers at a greater rate -- 3% between 1977-1991 -- than any other comparably sized sector of the U.S. economy and at more than three times the remainder of the U.S. economy (3.0% vs. 0.97%).
- These industries delivered over \$36 billion in foreign sales to this country in 1991. Preliminary data for 1992 indicate growth of 9% to \$39.5 billion, an achievement exceeded only by the aerospace and agriculture industries.

- provision of an exclusive right to control the rental of computer programs;
- establishes necessary high levels of protection for sound recordings above that secured in existing international conventions including
 - extending the term of protection to a full 50 years;
 - provision of an exclusive right to control rental of sound recordings (with, unfortunately, a "grandfather" provision permitting Japan to continue providing only 1 year of such an exclusive right);
 - provision for the protection of sound recordings in existence prior to the effective date of the Agreement in accordance with the same rules covering works protected under the Berne Convention;
- ensures that only trade-related economic rights, not "moral rights" are covered and subject to dispute settlement;
- establishes detailed obligations in the area of enforcement including remedies available in civil cases, a requirement of deterrent criminal fines and jail terms in the area of copyright piracy and trademark counterfeiting, and effective border control to prevent imports of infringing product; and
- significantly revises the currently ineffective GATT dispute settlement machinery, ensuring rapid conclusion of cases, preventing the guilty party from blocking sanctions, and making the taking of cross-sectoral retaliation automatic against the guilty party.

The two major flaws in the final TRIPS Agreement which were described in some detail in our November 1993 testimony before the Subcommittee detract from these overall well-recognized gains.

1. National Treatment

U.S. negotiators sought in vain to obtain agreement of the European Union to fill the gaps and clarify the ambiguities in the national treatment provisions in the Dunkel text. In his testimony last week before the Subcommittee, Ambassador Kantor emphasized that he was "bitterly disappointed by the European Union's intransigence with respect to national treatment and market access for our entertainment industries." Had the EU been willing to cease its discrimination against U.S. rightsholders, the chances of worldwide acceptance of the U.S.' improved proposal (known as Article 14bis) would have been vastly increased. However, notwithstanding the failure to eliminate these gaps and ambiguities, IIPA firmly believes that the existing national treatment obligation in Article 3 of the TRIPS Agreement does provide national treatment for many classes of U.S. rightsholders.

In some cases, however, WTO members will argue that they are free, without violating their international WTO obligations, for example, to discriminate against U.S. record companies by denying them the critical right to control the public performance and broadcasting of their works by digital means while extending that right to their domestic recording companies. As another example, under this national treatment provision, they could also seek to deny to U.S. record companies the proceeds resulting from blank tape levies to provide some, however inadequate, payment to rightsovers for the home taping of their recordings. This could

happen at the same time as the United States extends full national treatment under its recently adopted blank tape levy on digital recordings to that country's recording companies and performers whose recordings are copied here. The U.S. motion picture industry and U.S. artists and performers could continue to be denied appropriate shares of blank tape video levies on the grounds that the TRIPS national treatment provision authorizes this continuing discrimination and subsidy to their own industry. In the end, if these efforts by our trading partners are successful, the U.S. stands to lose millions of dollars in royalties justly due its industries and the American jobs that could be created with those funds will never materialize.

2. Overly Long Transition Periods

The TRIPS Agreement continues to permit those countries that qualify as "less developed countries" an additional four years beyond July 1, 1996 (the date for all "developed" countries), or until July 1, 2000 before they must bring their domestic legislation and enforcement regimes into full compliance with the obligations in the Agreement. The countries in transition to market economies², also may benefit from this additional transition period. Countries qualifying as "least developed countries" can take until July 1, 2005 to bring their regimes into compliance.

At present, there are a large number of developing countries that, as a result of inadequate legislation or lax enforcement, cause, collectively, billions of dollars in lost jobs and income to the United States. As the result of an aggressive bilateral program using Special 301, Section 301, the Generalized System of Preferences Program and similar programs, the U.S. Government has succeeded in bringing many of these countries to within months of compliance with the basic obligations in the TRIPS Agreement. Countries like Thailand, Turkey, Egypt, South Korea, Indonesia, Brazil, Venezuela, Philippines, India and Poland (all GATT members), to name but a few, together account for close to \$1.8 billion in losses due to piracy of U.S. copyrights. Were all these countries to take full advantage of their transition period rights under the Agreement (and assuming losses remain at the same level as in 1992; though they are likely to increase), the U.S. economy would lose an additional \$7 billion over that four-year period. This is a staggering blow to these industries and to the U.S. economy as they seek to add the new high-tech and high-wage jobs necessary for this country to be competitive into the next century.

What is plainly apparent is that none of these ten named countries needs or deserves to take an additional four-year period to deal with the problem of copyright piracy. USTR has been negotiating with each of these countries for well over five years already; many have indicated their commitment to significantly reduce piracy in 1994 or are already in breach of existing bilateral commitments to the United States. For any of these countries to take advantage of their rights under the TRIPS Agreement would be an outrage that the United States simply must not tolerate. Unfortunately, the TRIPS Agreement could condone such action.

In addition to these two major flaws in the text, the final TRIPS text also contains a new concession -- this time to the developed countries -- permitting them to have the benefit of a five-year moratorium on the application of the "nullification and impairment" provisions of the Agreement. IIPA has always viewed this remedy, which gets at the "spirit" rather than the letter of

² For a country to benefit, it must be "in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws."

the obligations in the Agreement, as providing key leverage to ensure that our major trading partners cannot undermine the Agreement for protectionist reasons. We regret that this concession was made but believe its absence can be compensated for by a clear and unequivocal U.S. trade policy that would result in punishing any country, at the end of the five-year moratorium, for any actions during the moratorium which had the effect of "nullifying or impairing" any benefit in the Agreement which the U.S. had bargained for.

THE CONTINUING NEED FOR AN EFFECTIVE BILATERAL TRADE POLICY IN INTELLECTUAL PROPERTY

The IIPA agrees with Ambassador Kantor's testimony that the multilateral disciplines imposed upon WTO members will provide great leverage in ensuring that the levels of protection mandated in the TRIPS Agreement are strictly met by our trading partners. For this reason, we have from the beginning supported the effort to include intellectual property disciplines in a new Round of trade negotiations. However, the deficiencies of the TRIPS Agreement we have noted are severe, and must be addressed by continuing aggressive action by the U.S. government in bilateral or other multilateral fora.

The need to create and maintain open markets for our most productive industries, such as our copyright industries, has been correctly recognized by the Administration as critical to U.S. economic, foreign and security policy, not just to trade policy. It is essential, therefore, that the U.S. ensure that the economic impact resulting from these flaws is minimized.

We are particularly pleased by President Clinton's acknowledgment in his December 15 letter to the Congress notifying it of his intention to enter into the new Agreement that "we were unable to overcome our differences with our major trading partners [on the audiovisual quotas in GATS and the national treatment issue in TRIPS]" but that the U.S. intends to reserve "all our legal rights to respond to policies that discriminate in these areas" [emphasis added].

Such "legal rights" must include Section 301 and Special 301, to which Ambassador Kantor also testified last week. IIPA believes that Section 301 and particularly Special 301 and the GSP, CBI and ATPA Programs remain fully viable both prior to the effective date of the WTO on July 1, 1995 and after that date. Such initiatives are most important with respect to countries that seek to take advantage of the transition period to delay confronting and resolving their piracy problems and with respect to issues not adequately addressed in this Agreement.

IIPA members are still in the process of evaluating and considering trade and non-trade policy options in the intellectual property area to ensure that our trading partners promptly open their markets to U.S. copyrighted works and avoid taking advantage of actual and potential national treatment loopholes in the TRIPS Agreement. Similar consideration is being given to dealing with the issue of broadcast and new technology quotas and similar restrictions faced by our audiovisual industry, particularly in the European Union. Finally, consideration must also be given to ensuring that multilateral obligations in the intellectual property area continue to keep pace with technological developments. Clearly, it will not be possible to secure quickly major changes to the TRIPS agreement which may become necessary due to unforeseen technological developments. A continuing and aggressive bilateral program must also be able to safeguard U.S. interests in this event as well.

1. U.S. Trade and Non-Trade Policies Before July 1, 1995

In our judgment, this brief period is a critical one for U.S.

policy in the intellectual property area. Because U.S. flexibility on a bilateral level is greatest during this period, we believe that agreements should be secured with as many of our developing trading partners as possible -- encouraged by all the "carrots" of U.S. trade and non-trade programs as possible and leveraged by all the bilateral or multilateral "sticks" at our disposal -- committing them not to take advantage of the transition periods otherwise available to them under the TRIPS Agreement. Such commitments can be contained in bilateral IPR, trade, investment or other similar agreements. We should also use this period to engage bilaterally with the EU to seek to resolve the national treatment problems that face our industries there. Of course, to be successful at the latter enterprise will require taking a careful inventory of what the EU member states need from the U.S. and ensuring that it is not provided without a resolution of the national treatment question.

The Special 301 process should not be the only tool available to secure improvements in intellectual property protection. Other avenues, as noted above, such as using the benefits made available to other countries through both trade and non-trade programs, should be coordinated and applied by the Administration. Such programs would include not only preferential trade programs, like GSP (which we urge be renewed this year), the CBI and ATPA, trade programs like the Enterprise for the Americas Initiative (EAI) for Latin America and APEC for Asia, but also non-trade incentives, like aid programs, and World (and regional) Bank loans and concessions. All such government programs should be coordinated under an export-oriented trade policy which seeks to maximize the market-opening, anti-piracy objectives of the United States.

2. U.S. Trade and Non-Trade Policies After July 1, 1995

While the procedures under Special 301, including the identification of countries that pose IPR problems to the U.S. under Section 182 and the commencement of investigations against countries named as Priority Foreign Countries, should continue in effect and should be aggressively used by the Administration, remedies available to the U.S. under its bilateral programs -- because of the wider coverage of, and bindings in, the WTO -- become more limited.³ However, withdrawal of preferential benefits extended to any country under programs like the GSP, CBI and ATPA may still occur for failure to meet IPR criteria established for these programs. Countries that unfairly take advantage of the WTO authorized transition period to continue to steal U.S. intellectual property should also be made vulnerable to removal of other trade and non-trade benefits that they receive from the U.S.

Concerted efforts should be made to encourage our trading partners, in appropriate cases, to join the NAFTA and adhere to the strong IPR text of this Agreement. We note in particular that the NAFTA contains a straight-forward national treatment provision of the type the U.S. was unable to achieve in the GATT.⁴

³ We strongly agree with statements recently made by Administration officials that where the U.S. national interest is demonstrably at stake, the U.S. should not hesitate to take sanctions even in WTO-bound areas if it would be fruitful in ending the conduct which is damaging to those interests.

⁴ Unfortunately, Canada was able to extend its "cultural exemption" in the CFTA to insulate it from obligations in the IP portion of the NAFTA, including national treatment. Any such implementation of this exemption would, however, be met by immediate U.S. retaliation. Such "cultural exemption" applies only to Canada and would not be extended to any other potential NAFTA member.

IMPLEMENTATION OF THE WTO AGREEMENT

Congress should ensure that it mandates the Administration, through the implementing legislation process, to (a) undertake an inventory of trade and non-trade measures available to the U.S. in both these time periods, (b) continue aggressive use of Special 301, preferential trade programs and all other avenues of trade and non-trade leverage, and (c) interpret the new WTO Agreement, including in particular the national treatment language, in a manner strictly favorable to the U.S. position.

The IIPA has not yet completed its full review of what implementing legislation should be adopted to bring the WTO into full effect in the United States. So far, however, we have identified the need to adopt a criminal provision, at the federal level, concerning the "bootlegging" of artistic performances. Such a provision would implement Article 14 of the TRIPS Agreement. While such "bootlegging" is already illegal in most states, this protection should be implemented at the federal level.

CONCLUSION

We look forward to working with the Congress and the Administration to implement this historic Agreement in a manner that preserves the ability of the U.S. to take bilateral action where its interests are threatened in the intellectual property area. If we are to preserve the ability of our entertainment and high technology industries to obtain the full benefits from the multilateral system, we will need the support of this Subcommittee, the Congress and the Administration to obtain full national treatment and full market access against restrictive quotas affecting our movie and recording industries and to minimize the losses which could result from the unfair and overly long transition periods.

Chairman GIBBONS. Thank you, Mr. Smith.
This is an important agenda for us here in the future.
Mr. Hackman.

STATEMENT OF TIMOTHY B. HACKMAN, DIRECTOR OF PUBLIC AFFAIRS, TECHNOLOGY AND GOVERNMENTAL PROGRAMS, INTERNATIONAL BUSINESS MACHINES CORP.; ON BEHALF OF THE INTELLECTUAL PROPERTY COMMITTEE

Mr. HACKMAN. Thank you very much, Mr. Chairman.

I am Tim Hackman, Director of Public Affairs for Technology of the International Business Machines Corp., and I am here today representing the Intellectual Property Committee.

Mr. Chairman, we appreciate your invitation to provide our views on the Uruguay round agreements. I will begin my remarks today with the IPC's assessment of the TRIPs agreement. The bulk of my remarks, however, will focus on the development of a post-Uruguay round strategy for intellectual property. Such a strategy is necessary both to implement the TRIPs agreement and to offset the agreement's shortcomings, especially the long transition periods before the TRIPs provisions are fully implemented.

Mr. Chairman, I do not have to convince this subcommittee about the importance of intellectual property protection abroad for the international competitiveness of U.S. industry and for job growth here in this country. Your subcommittee has played a critical role in developing much of the legislation, including special 301, that has served so well the international intellectual property interests of the United States.

The final TRIPs text goes a long way in providing the type of international intellectual property protection that the IPC, three successive administrations and the U.S. Congress sought together over the last 7 years. On balance, the text contains high standards of protection and enforcement for patents, copyrights, trade secrets, trademarks, industrial designs and semiconductor layout designs. It has a multilateral dispute resolution mechanism and limits many of the exceptions and derogations from the standards of protection that had been a concern for the IPC.

Unfortunately, the final TRIPs text also contains certain deficiencies. The major deficiencies include overly long and discriminatory transition periods before the developing countries have to undertake their TRIPs obligation. For example, newly industrialized countries such as Brazil and Korea, which already compete very effectively not only with the United States, but also with other developed countries across a broad range of technologically advanced products, will not have to provide TRIPs intellectual property protection until July 1, 2000. Those developing countries that do not have in place patent protection for pharmaceutical and agri-chemical products on July 1, 1995, the date that the TRIPs agreement enters into force, will be permitted to continue their piracy of such products for 10 years, until July 1, 2005.

Another major deficiency is found in the copyright provisions of TRIPs, where there are ambiguities regarding the provision of full national treatment to all intellectual property rights holders. And I single out again, as did Mr. Smith, rights holders in the phonogram and audiovisual industries. These ambiguities will per-

mit WTO members to argue that their discrimination against U.S. nationals is sanctioned under TRIPs. This will cost the U.S. entertainment industry by 1998 in excess of \$200 million per year in lost revenues in Europe alone.

The TRIPs agreement also contains other deficiencies. All of these deficiencies are carried over from the Dunkel text and were identified in a letter that the IPC sent to Ambassador Kantor last March. I ask that that letter be inserted in the record of this hearing, Mr. Chairman.

Chairman GIBBONS. Without objection, it will be included at this point.

[The letter referred to follows:]

IPC

INTELLECTUAL PROPERTY COMMITTEE

2300 M Street, N.W. Suite 800 Washington, D.C. 20037
 Phone: (202) 973-2870 Telecopier: (202) 296-8407

March 11, 1993

The Honorable Michael Kantor
 United States Trade Representative
 Office of the United States Trade Representative
 Washington, DC 20506

Dear Ambassador Kantor:

The Intellectual Property Committee (IPC), which was formed in March, 1986, is the only business group that has as its specific mission the mobilization of international support for improving the protection of intellectual property, and, as such, has focused much of its efforts on the GATT intellectual property (TRIPS) negotiations.

In this regard, the IPC wishes to take this opportunity to familiarize you with its views on the Dunkel text on TRIPS. While the Dunkel text on TRIPS goes a long way in providing the type of international intellectual property protection that the IPC and the U.S. Government have been seeking together in the GATT for over the last seven years, it also contains certain provisions that undermine adequate and effective international intellectual property protection.

We believe that the following are the major outstanding deficiencies in the current text that need to be improved in order to secure an adequate and effective international intellectual property instrument in the GATT:

1. Transitional arrangements - The transition period for developing countries currently found in the TRIPS text is too long. Developing countries should only be permitted an additional one year of transition for all intellectual property elements. Furthermore, the current draft discriminates among industrial sectors. The only way to ensure that the pharmaceutical, agrichemical and chemical industries gain commercial benefits from the TRIPS agreement that are similar to those of other patent-based industries is to provide pipeline protection along the lines found in the Mexican industrial property law or in the amendments to Article 70(8)(ii) suggested by the United States during the course of negotiations.
2. Works-Made-For-Hire - Failure to accord U.S. copyright owners national treatment with regard to video and audio levies and other collective compensation mechanisms and to require other countries to give effect to U.S. contractual arrangements will deprive U.S. copyright owners of millions of dollars otherwise due to them. It, therefore, is essential that a TRIPS agreement contain a provision on works-made-for-hire, including both national treatment and respect for contractual relationships.
3. Exhaustion - The language currently found in the Dunkel text is not neutral and continues to provide a basis for GATT support for international exhaustion. The language on exhaustion should either be deleted or redrafted to render it clearly neutral.

We have provided in the enclosure a more detailed description of our concerns about these and a number of other very serious deficiencies currently found in the Dunkel text. The final position of the IPC on an overall TRIPS text will depend on the success that our negotiators will have in gaining the improvements in the Dunkel text that we seek.

Should you have any questions or comments, please contact our counsel, Charles S. Levy (202/663-6400) or our economic consultant, Jacques J. Gorlin, (202/973-2870).

Under separate cover, the IPC will be providing you with its views on the intellectual property provisions of the NAFTA Agreement.

Sincerely,

Bristol-Myers Squibb

Johnson & Johnson

Digital Equipment Corporation

Merck & Co., Inc.

E.I. DuPont de Nemours & Company

Monsanto Company

FMC Corporation

Pfizer Inc.

General Electric Company

The Procter & Gamble Company

Hewlett-Packard Company

Rockwell International Corporation

IBM Corporation

Time Warner Inc.

Major Deficiencies in the Dunkel Text on TRIPS
(An Analysis Prepared by the Intellectual Property Committee of
Annex III to MTN.TNC/W/FA of 20 December 1991)

March 11, 1993

The following are the major outstanding deficiencies in the order that they appear in the current text on TRIPS that need to be improved in order to secure adequate and effective international intellectual property protection:

1. Article 3 and Article 4 — The TRIPS text should mandate the strict application of National Treatment and Most Favored Nation Treatment for sound recordings.
2. Article 6: Exhaustion — The language contained in the Dunkel text continues to provide a basis for GATT support for international exhaustion. Both Article 6 and reference to Article 6 in the footnote to Article 28(i) should be deleted or redrafted to render them clearly neutral.
3. Part II, Section 1
 - a. Article 14(4): Rental Right for Sound Recordings — The general standard for record rentals should be an exclusive rental right. The only exception to that standard should be a one-year exclusive rental right followed by equitable remuneration for countries having a system of equitable remuneration for record rentals on the date of signature of the TRIPS accord.
 - b. Works-Made-for-Hire/Contractual Rights — Failure to accord U.S. copyright owners national treatment with regard to video and audio levies and other collective compensation mechanisms and to require other countries to give effect to U.S. contractual arrangements will deprive U.S. copyright owners of millions of dollars otherwise due to them. It, therefore, is essential that a TRIPS agreement contain provisions on works-made-for-hire, including both national treatment and respect for contractual relationships among the persons involved.
4. Article 30: Exceptions to Patent Rights — Because the provisos in Articles 8 and 40 that certain measures that could be used to weaken intellectual property rights must be consistent with the provisions of the TRIPS agreement, the "exceptions" language in Article 30 takes on special significance. In its current form, the language is too open-ended. To ensure that the exceptions are limited, the first "unreasonably" and the phrase "taking account of the legitimate interests of third parties" must be deleted from Article 30.
5. Article 31(i): Dependent Patent Compulsory Licensing — The requirement that the second patent shall involve an important technical advance of considerable economic significance

is not a sufficient enough safeguard to permit U.S. recognition of dependent patent compulsory licensing. It is the IPC preference that such practices be prohibited. If this cannot be accomplished, Article 31(l), at a minimum, should be redrafted to ensure that the dependent patent constitutes an important technical advance with considerably greater economic significance in relation to the invention claimed in the first patent. This redrafting should include, for example, explanation that a compulsory license shall not be available for a mere alternative process for the production of a product that is already available by existing processes.

6. Article 39: Protection of Undisclosed Information

a. Article 39(2) — As currently drafted, the footnote to Article 39(2) that defines "a manner contrary to honest commercial practices" would not expressly provide protection against continued use or further dissemination by a third party of a trade secret after it can be established that practices contrary to honest commercial practices were involved in the acquisition. The addition of the term "or use" to the fourth line of footnote(1) after the word "acquisition" clarifies that protection is available against continued "use" and not merely "acquisition."

b. Article 39(3): "Me Too Registration" — Protection against "me too registration" should not be limited to pharmaceutical or agricultural chemical products "which utilize new chemical entities." The latter limitation should be deleted, since the testing of old chemical entities by more modern procedures — quite often after the expiration of patent protection and involving considerable effort — is increasingly being required by governments in order to maintain product registration.

7. Part VI: Transitional Arrangements

a. Article 65:4 should be deleted. There cannot be any differentiation among industrial sectors with respect to transition arrangements.

b. The five-year transition period for developing countries is too long, regardless of the type of intellectual property. Developing countries, most of which already have the necessary institutional infrastructure to provide adequate intellectual property protection, should only be permitted an additional one year of transition for all intellectual property elements.

c. Article 66: Least Developed Countries — The eleven year transition period for least developed countries is too long, particularly in the field of copyright, and will result in copyright pirates simply switching their bases of operation to such least developed countries.

8. Article 70: Protection of Existing Subject Matter

a. Article 70(2) — Because some countries (China, Mexico) argue that the Berne Convention does not currently extend rights to works such as computer programs, they may well argue that Berne Article 18 does not apply to computer programs. Accordingly, the language in Article 70(2) that "obligations with respect to existing copyrighted works

shall be solely determined under Article 18" provides a significant loophole. This phrase should be changed to "copyright obligations with respect to existing [copyrighted] works shall be solely determined under Article 18 of the Berne Convention (1971), or under Article 18 of the Berne Convention, mutatis, mutandis...." The change would make it clear that the rules of Berne Article 18 as to retroactivity would apply whether or not the work was considered (under Berne) a copyrighted work.

b. Article 70(4) — The convoluted language is very dangerous and could be used to negate any transition protection found in the rest of the TRIPS text. At a minimum, the wording must be simplified to address directly the understandings U.S. negotiators have about the intent of Article 70(4) that were conveyed to the IPC.

c. Articles 70(8) and (9) — Patent counsel in the IPC companies, based on their real world experience, do not believe that these articles — especially Article 70(9) — provide any supplementary protection or tangible commercial benefits. The only way, therefore, to ensure that the pharmaceutical, agrichemical and chemical industries gain commercial benefits from the TRIPS accord that are similar to those of other patent-based industries is to provide pipeline protection along the lines found in the Mexican industrial property law or in the amendments to Article 70(8)(ii) suggested by the United States during the course of the negotiations. In addition, the language of Article 70(8) should be made consistent with that of Article 65(4) to ensure that the transition provisions under Article 70(8) are extended to all products covered by Article 65(4) (e.g., chemical as well as pharmaceutical and agrichemical products).

To the extent that the following issues can be addressed, international intellectual property protection will be substantially improved:

1. Article 8: Principles — So long as the language on exceptions in Article 30 is not strengthened, Article 8 as currently drafted permits the full exploitation of "public interest" and "public health" measures.
2. Definition of "Public Performance" — The absence of a definition of "public performance" could result in the denial of protection for many uses. U.S. and EC negotiators, therefore, should try again to craft a satisfactory definition of "public performance."
3. Article 27(2): Exclusions from Patentability — The term "commercial" should be deleted. The banning of only "commercial exploitation" presumably would permit non-commercial uses, such as production and distribution by the government, of the inventions that had been denied patent protection for the enumerated public policy-type reasons.
4. Article 27(3) — Exclusion of plant and animal inventions other than microorganisms from patentability goes beyond the current practice under the European Patent Convention, which the IPC had supported as the ultimate resolution of this issue. A critical class of inventions, with great commercial significance, will be excluded from protection.
5. Article 34: Process Patents: Burden of Proof — Parties should be required to provide for the reversal of the burden of proof without its being dependent on a judicial order. Otherwise, the remedy becomes subject to local political pressure. In addition,

Mr. HACKMAN. It should come as no surprise to this subcommittee, therefore, that we continue to be deeply troubled by the gaps in protection for intellectual property. However, on balance, the benefits of the TRIPs accord outweigh our particular concerns, especially since the agreement's deficiencies can still be overcome through the development and implementation of a comprehensive intellectual property protection strategy for the United States. Under these circumstances, the IPC supports the TRIPs agreement and urges this committee and Congress to adopt the legislation necessary to implement U.S. obligations under the accord.

The struggle on behalf of adequate and effective intellectual property protection abroad will not end with congressional action on the TRIPs agreement. U.S. industry will continue to face assaults in the industrialized, as well as in the developing countries. Indeed, we have already seen and are continuing to see them, for example, in the computer software area, which Mr. Smith had previously addressed, in terms of the Japanese review of their copyright laws, as well as the steps taken by the European Telecommunications Standards Institute with respect to telecommunications technology to require compulsory licensing of anyone who wants to participate in the standards setting activities in Europe. In addition, there are equally onerous examples in the pharmaceutical and chemical and entertainment industries, to name a few.

So long as the LDCs avail themselves of the lengthy transition periods and so long as the assaults on our intellectual property continue in the developed as well as developing countries, the IPC believes that it is premature for the United States to rely solely on the WTO dispute settlement process.

The post-Uruguay round strategy on intellectual property that the IPC proposes should begin with a declaration in the statement of administrative action—to be repeated in the implementing legislation—underscoring the importance of strong intellectual property protection for the continued global competitiveness of U.S. industry and job growth in the United States.

The strategy will need the support of all governmental agencies, not just those like USTR and PTO that have traditionally dealt with intellectual property. In addition, selected U.S. Government programs may require fine tuning in order to enhance their ability to serve as instruments of U.S. intellectual property policy. For example, consideration should be given to strengthening the linkage between GSP and CBI benefits and intellectual property protection in beneficiary countries, and to using the U.S. foreign assistance and OPIC Programs to encourage and facilitate improved intellectual property protection in those recipient countries.

Other elements in the U.S. strategy would be the expanded negotiation of bilateral intellectual property agreements with countries interested in working with the United States to improve their intellectual property protection. Intellectual property protection should also be an important component in U.S. regional initiatives, such as the possible expansion of NAFTA and the efforts currently under way in APEC.

While the IPC looks principally to an invigorated and highly targeted bilateral program, active involvement in the establishment of the TRIPs regime in the WTO is critical to long-term U.S. intellec-

tual property interests. Strong U.S. involvement in the initial operations of the TRIPs council in the WTO will send a clear signal that the United States intends to pursue its TRIPs rights as they become available to us.

In conclusion, Mr. Chairman, while the IPC supports the implementation of the TRIPs agreement, it also believes that a comprehensive strategy must be developed not only to "complete" the TRIPs negotiations, but also to effectively repel the continuing assaults on our intellectual property. The IPC stands ready to work with the Congress, and especially with this subcommittee and its counterpart in the Senate, and with the administration in the development of such an intellectual property strategy for the 21st century.

Thank you.

[The prepared statement follows:]

TESTIMONY OF TIMOTHY B. HACKMAN INTELLECTUAL PROPERTY COMMITTEE

I am Timothy B. Hackman, Director of Public Affairs, Technology, Governmental Programs of the International Business Machines Corporation. I appreciate your invitation to provide the views of the Intellectual Property Committee (IPC) on the Uruguay Round trade agreements. My testimony today will focus on two issues: (i) the IPC's assessment of the TRIPS (intellectual property) Agreement, Annex 1C of the Final Act; and (ii) the development of a post-Uruguay Round strategy on intellectual property that is necessary both to implement the TRIPS Agreement and offset the agreement's shortcomings, especially the long transition periods before the TRIPS provisions are fully implemented.

The IPC was formed in March, 1986 -- six months before the Punta del Este Ministerial Meeting that launched the Uruguay Round -- with the specific mission of gaining the negotiation of an intellectual property agreement in the GATT. Senior management of the IPC member companies has worked very closely with U.S. negotiators and the Congress -- especially with members of this subcommittee and their staffs -- and with our private sector counterparts in Europe and Japan to develop a GATT Agreement that would contain adequate and effective intellectual property protection. The IPC believes that substantial progress was made in these negotiations and accordingly supports the TRIPS Agreement and the adoption of the legislation necessary to implement U.S. obligations under the accord.

The IPC's long support for the negotiation of an intellectual property agreement in the GATT stems from the inexorable link between intellectual property protection and American competitiveness and job growth. America's competitive edge rests ultimately on our creativity and resourcefulness -- the unique ability of Americans to generate new ideas and develop new ways of looking at the world. The contribution of the intellectual property-based industries to the U.S. economy was recognized by Ambassador Kantor in testimony before the full Committee last week, when he pointed out that trade in U.S. goods and services protected by intellectual property rights reflect a consistent trade surplus. He went on to declare that strengthened protection of intellectual property rights and enforcement of those rights "will enhance U.S. competitiveness, encourage creative activity, and expand exports and the number of jobs."

1. Assessment of the TRIPS Agreement

The TRIPS text goes a long way in providing the type of international intellectual property protection that the IPC, three successive Administrations and the U.S. Congress sought together over the last seven years through the GATT. On balance, the text contains high standards of protection and enforcement, has a multilateral dispute resolution mechanism and limits many of the exceptions and derogations from the standards of protection that had been a concern for the IPC. Among the critical improvements in the worldwide protection of intellectual property that are contained in the TRIPS Agreement are the following:

- a) In copyright, the TRIPS Agreement requires WTO Members to comply with the Berne Convention, with the exception of the "moral rights" provisions. Members are required to grant protection to databases and computer programs as literary works under Berne. Rightholders of computer programs and sound recordings receive the right to authorize or prohibit rental of these products. The duration of copyright protection must be compatible with Berne and the TRIPS Agreement provides a 50-year term for the protection of sound recordings. The agreement's enforcement provisions mandate the imposition of deterrent criminal penalties against copyright piracy.
- b) With respect to patents, the agreement provides for product and process patents for virtually all types of inventions, including pharmaceuticals and agrichemicals. Members agree to protect patents for at least 20 years from the filing of a patent application, and to make "patents available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced." Members will thus have to recognize the importation of patented products as satisfying local working requirements for purposes of compulsory licensing. The IPC believes that the compulsory licensing provisions of the Final Act, which were carried over from the Dunkel draft text, will prove to be effective in limiting the most egregious

compulsory licensing practices that its members currently face in many countries. While compulsory licensing is not prohibited, its use is subject to very specific conditions, including a requirement of adequate notification and remuneration and judicial review. In an affirmation of the territorial principle of intellectual property rights, the TRIPS Agreement confers on patent holders the exclusive right to prevent third parties from importing a patented product.

- c) In the area of proprietary information, the agreement protects trade secrets against third-party acquisition, and prohibits unfair commercial use of proprietary test data submitted by firms to government agencies to demonstrate the safety and efficacy of pharmaceutical and agrichemical products that utilize new chemical entities.
- d) With respect to semiconductor layout designs, the TRIPS Agreement addresses the major weaknesses of the WIPO Washington Chip Treaty. The term of protection is extended to 10 years and the innocent infringer provisions are strengthened. Compulsory licensing of the semiconductor industry's patents and layout designs, while subject to the same conditions as other patent compulsory licensing, is further limited to public, noncommercial use or to remedy a practice determined after judicial or administrative process to be anticompetitive.
- e) With respect to enforcement measures, Members agree to make available effective enforcement procedures for intellectual property rights. The TRIPS Agreement covers both civil and administrative remedies and includes provisions on damages, injunctive relief, and due process. In addition, the agreement includes provisional measures, with safeguards, for expeditious action. Members also agree to make available special border measures to permit suspension of release by customs authorities of suspected infringing imports. These measures are mandatory for counterfeit trademark and pirated copyrighted goods, and may be extended to goods involving industrial designs, patents, integrated circuits, or undisclosed information.

Unfortunately, the final TRIPS text also contains certain gaps in protection. Our concerns about these gaps should not come as a surprise to this subcommittee since they are identical to those deficiencies in the Dunkel text identified by C.L. Clemente of Pfizer, Inc., in his appearance, on the IPC's behalf, before this subcommittee last November. The major deficiencies include:

- a) The overly long and discriminatory transition periods before the developing countries (LDCs) have to undertake their TRIPS obligations. The generally adequate and effective standards of intellectual property protection, which I described above, will be of little immediate help to U.S. industry, which must now wait five to ten years before it can begin to reap any commercial benefits in the LDCs from TRIPS. Newly industrializing countries (NICs), such as Brazil and Korea, which already compete very effectively with the United States and other developed countries across a broad range of technologically-advanced products, will not have to provide TRIPS-level intellectual property protection until July 1, 2000. Least developed countries will have an additional six years -- until July 1, 2006 -- to conform their laws to the TRIPS Agreement. In addition to being overly long, the transition periods discriminate among industrial sectors by providing a longer transition for pharmaceutical, agrichemical and chemical products. Thus, those LDCs that will not have in place product patent protection for pharmaceutical and agrichemical products on the date that the TRIPS Agreement enters into force (July 1, 1995) will be permitted to continue their piracy of such products for an additional five years -- until July 1, 2005. This discrimination among industrial sectors is compounded by the absence from the TRIPS text of any pipeline protection that would ensure that the pharmaceutical, agrichemical and chemical industries, whose products face long delays in gaining marketing and regulatory approval before they can reach the market, have commercial benefits from the TRIPS agreement that are similar to those of the other patent-based industries.
- b) Exceptions to "national treatment." Our negotiators failed to gain a clarification of the ambiguities in the copyright provisions of the TRIPS Agreement regarding the provision of full national treatment to all intellectual property rightholders.

This failure to deal with exceptions to the cardinal trade principle of "national treatment" will permit WTO Members to argue that their discrimination against U.S. nationals is permitted under TRIPS. This alone will cost the U.S. entertainment industry by 1998 in excess of \$200 million per year in lost revenue in Europe.

In addition, Mr. Clemente identified two other deficiencies, which the IPC considered to be "technical" in nature. These involved the protection of proprietary registration data provided to governments for the marketing approval of pharmaceutical or agricultural chemical products ("me too registration") and the protection of existing subject matter under TRIPS Article 70(9). Neither of these two technical deficiencies were corrected in the Final Act. Finally, the IPC is deeply disappointed with the addition, in the closing days of the round, of the five-year moratorium on the application of the "nullification and impairment" provisions to TRIPS. This moratorium may adversely affect our ability to reap early commercial benefits from TRIPS in the industrialized countries, which must implement TRIPS after one year (by July 1, 1996), and some of which are the most likely WTO Members to attempt to evade the "spirit" as opposed to the "letter" of the TRIPS provisions.

Since our negotiators were unable to gain the improvements that we sought, it should come as no surprise to this subcommittee that we continue to be deeply troubled by these and other substantive gaps that we had previously identified and the overly long and discriminatory transition periods. However, on balance, the benefits of the TRIPS Agreement outweigh our particular concerns, especially since the agreement's deficiencies can still be overcome through the development and implementation of a comprehensive U.S. strategy. Under these circumstances, as I indicated earlier, the IPC supports the TRIPS Agreement.

2. Post-Uruguay Round trade strategy on intellectual property

One of the original objectives of the IPC in seeking an intellectual property agreement in the GATT was the discipline that a multilateral dispute settlement mechanism would place on countries with respect to their protection and enforcement of intellectual property. The IPC, thus, welcomes, in principle, the application of the provisions of the WTO dispute settlement understanding to TRIPS and would be supporting the sole use of the enforcement measures contained in the understanding were it not for the gaps in the protection and the overly long and discriminatory transition periods. With the possible exception of agriculture, the TRIPS Agreement is the only Uruguay Round text that bars, for the next five to ten years, a Member from taking any effective action, under the WTO multilateral dispute settlement mechanism, against a developing country Member that has not met its Uruguay Round obligations. Because this safe harbor is so egregious, the IPC regards the lengthy transition periods to be a substantive TRIPS failing and a significant gap in protection. The negative impact of the long transition periods cannot be dismissed.

Furthermore, U.S. industry continues to face assaults on its intellectual property that seek to undermine even those rights to which Members have committed under the TRIPS Agreement. These attacks are not limited to the problems that the U.S. pharmaceutical, agrichemical and audiovisual industries will continue to face so long as the gaps in the TRIPS provisions are not filled. These assaults affect other highly competitive U.S. industries as well. For example, the Japanese Government is currently reviewing its copyright laws with an eye to substantially weakening its already limited protection for computer programs. Across the Atlantic, the European Telecommunications Standards Institute (ETSI), which the EU Commission argues is a private organization outside the scope of TRIPS, is essentially requiring the compulsory licensing of critical intellectual property for those who wish to participate in drafting ETSI standards, which then become mandatory throughout the world. The IPC believes that so long as the LDCs avail themselves of the lengthy transition periods and these and other assaults on our intellectual property continue, it is premature for the United States to rely solely on the WTO dispute settlement process.

The United States cannot be complacent. The U.S. private sector needs a strategy to deal with what we believe to be the unique situation facing TRIPS -- the long transition periods when our "multilateral" hands are tied -- and the continued assaults on our intellectual property -- the very lifeblood of U.S. creativity and competitiveness.

In the absence of such a strategy, U.S. rightholders will continue to face hundreds of millions of dollars in lost commercial benefits. The U.S. private sector is prepared to work with the Congress -- especially this subcommittee and its counterpart in the Senate -- and the Administration to develop such a strategy to be used after July 1, 1995. Until then, the IPC urges the Administration to continue the current Special 301 program in support of strong intellectual property protection abroad.

U.S. successes of the last ten years in gaining improved intellectual property protection for U.S. rightholders abroad have been the result of a judicious mix of bilateral, regional and multilateral instruments. The leverage provided against certain countries such as Korea and Taiwan by Section 301, and after 1988, by Special 301; the negotiation of bilateral intellectual property agreements with such countries as the PRC and Ecuador; the negotiation of the NAFTA accord with Mexico and Canada and finally, the completion of the TRIPS text have all contributed to improvements in intellectual property protection abroad. However, there is still much unfinished business that needs to be addressed. The IPC believes that each of the elements of current U.S. intellectual property policy should be revisited and restructured, where necessary, to reflect the post-Uruguay Round international trading environment that will color the process after July 1, 1995.

a) Bilateral dimension

Special 301 has been an effective tool in raising the level of intellectual property protection since its establishment in the 1988 omnibus trade bill. We are now witnessing an aggressive international campaign against its continued use. There is a growing crescendo, originating for the most part in Europe, that is hailing the demise of U.S. unilateral actions to break down foreign trade barriers and eliminate unfair trade practices. Both government officials and industry representatives abroad point to the WTO dispute settlement understanding and institutional framework as removing any scope for unilateral action by WTO Members.

This campaign raises very serious problems with respect to our ability after July 1, 1995 to fill the substantive gaps in TRIPS and to accelerate LDC compliance with the TRIPS standards. The IPC does not have an answer to whether and, if so, the extent to which our ability to use bilateral trade measures has been checked. It is, however, clear to the IPC that the United States needs an equally aggressive response to the international campaign against 301 in order to ensure that the current assertions about 301 do not become carved in stone and accepted as the conventional wisdom. Regardless of whether or not 301 is affected by the WTO dispute settlement understanding, we must recognize that the uniqueness of the TRIPS situation and the continued assaults on our intellectual property require the development of a concerted U.S. intellectual property strategy.

A post-Uruguay Round U.S. strategy on intellectual property must rest on the recognition of the vital importance of strong intellectual property protection to the continued global competitiveness of U.S. industry and job growth in the United States. A declaration to this effect should be included in the Statement of Administrative Action and repeated in the implementing legislation as a signal to our trading partners from both branches of the U.S. Government that the task of securing high levels of intellectual property protection will not be complete until the TRIPS gaps are filled and the LDC implementation of, at a minimum, the TRIPS standards of intellectual property protection and enforcement is accelerated. Such a statement will also commit all agencies of the U.S. Government -- not solely the Office of the U.S. Trade Representative, the Patent and Trademark Office and the parts of the Commerce and State Departments that deal with intellectual property matters -- to the attainment of this particular trade objective. Indeed, the IPC urges this committee to consider grouping together under one section of U.S. law all the authorities needed to gain improved intellectual property protection abroad. Such a section should include the following elements:

- (i) Country identification - A process akin to that currently called for under Special 301 should be developed to identify the countries that are the

most egregious violators of intellectual property rights abroad. These countries will then become the focus of a concerted government-wide effort, which will bring to bear the governmental pressure points that are the most relevant to the bilateral U.S. relationship with that particular country. One, thus, could anticipate the consideration of U.S. programs administered by such diverse agencies as the Justice Department, Agriculture, Defense, State or even the Maritime or Federal Aviation Administration, in addition to the specific programmatic levers discussed below.

(ii) Additional U.S. Government levers - Consideration of additional levers may well require a fine tuning of selected U.S. Government programs to enhance their ability to serve as instruments of U.S. intellectual property policy. In some cases, such fine tuning may require changes in their statutory authorities or regulatory practice. Possible levers include but are not limited to:

- Benefits under U.S. preferential schemes - The United States provides preferential trade benefits to beneficiary countries under the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI) and the Andean Trade Preference Act (ATPA). Under all these programs, the extent to which the beneficiary country provides adequate and effective protection of intellectual property is among the factors that the President must take into account in determining whether to extend beneficiary status to a country. The eligibility criteria for these programs might be stiffened with respect to the denial of the preferential trade benefits or, alternatively, GSP and the other preferential schemes could be incorporated into Special 301 as a specific remedy for the denial of intellectual property protection. The IPC plans to provide a broader and more in-depth analysis of such an approach later this month in a written statement that it will submit in response to the Committee's request for private sector comments on the possible extension of GSP.
- U.S. foreign assistance and OPIC programs - The Agency for International Development and the State Department should be encouraged to develop programs that will provide technical assistance to build up the intellectual property-related infrastructures of those LDCs that have adopted, at a minimum, GATT-level intellectual property protection. For example, training of patent examiners and establishment of patent search facilities as well as the training of the judiciary and police officials in the enforcement of intellectual property laws are as critical to the development of a successful intellectual property regime as the passage of adequate laws. The Overseas Private Investment Corporation should also be encouraged to examine whether intellectual property assets might be coverable under U.S. Government investment insurance programs in developing countries that provide adequate and effective intellectual property protection. Conversely, the U.S. should consider the conditions under which foreign aid and OPIC benefits would be withdrawn from countries that continue to deny intellectual property protection to U.S. rightholders.
- World Bank and Regional Development Bank Programs and IMF Activities - U.S. Executive Directors to the World Bank, the regional development banks such as the Interamerican Development Bank and the International Monetary Fund should be instructed to undertake a campaign within these institutions to ensure that their programs support the objective of improved intellectual property protection. U.S. Executive Directors should be instructed to vote against any loans or programs that will benefit countries that continue to deny intellectual property protection to U.S. rightholders. Conversely, the U.S. Executive Directors should encourage the banks and their affiliates to develop programs that will fund the

establishment of the infrastructure needed to implement strong intellectual property laws.

- (iii) Bilateral intellectual property agreements - There is a growing number of countries that have expressed an interest in working with the United States to improve their intellectual property protection. The United States should undertake the negotiation of bilateral intellectual property agreements with these countries, using as the starting point the model U.S. intellectual property agreement, which the IPC understands is currently under interagency review. Such a document, which is provided to countries that express an interest in entering into a bilateral intellectual property accord with the United States, must include the optimum level of intellectual property protection that the United States seeks. In many instances this means the inclusion of superior provisions that our negotiators were not able to get into the NAFTA intellectual property chapter. In addition, the United States should maintain the pressure on countries after the successful negotiation of bilateral intellectual property agreements in order to ensure that they adopt implementing legislation in a timely manner. Countries should be held to the specific terms of the bilateral agreements that they have negotiated.

b) Regional Dimension

Intellectual property protection should be an important component of all U.S. regional initiatives. Countries such as Argentina and Chile that have expressed an interest in joining NAFTA should be urged to make a downpayment of improved intellectual property protection, as did Mexico, prior to their entering into the accession negotiations. Countries or regional groupings that seek to accede to NAFTA will have to sign on, at a minimum, to NAFTA-level intellectual property protection. Similarly, NAFTA-level intellectual property protection should play a prominent role in the U.S. strategy with respect to Asia Pacific Economic Cooperation group. In making its report and recommendations, which are required by the NAFTA implementing bill, on possible candidates for joining the NAFTA free trade area, USTR should give prominence to the intellectual property situation in the foreign country.

c) Multilateral Dimension

- (i) World Trade Organization (WTO) - While the IPC looks principally to an invigorated and highly targeted bilateral program to fill the gaps in the TRIPS Agreement and to accelerate the LDC transition periods, active involvement by the United States in the establishment of the TRIPS regime in the WTO is critical to long term U.S. intellectual property-related interests and could play some role in dealing with our transition problem.

In the first instance, the United States must ensure that the WTO work program for TRIPS, which will be announced at the April 15 Marrakesh meeting, will lead to the establishment of a workable TRIPS Council ready to undertake on July 1, 1995, activities and interpretations that support adequate and effective intellectual property protection. Strong U.S. involvement in the organization of the TRIPS Council and later in the work of the Council itself will help ensure that ambiguous TRIPS provisions will be correctly interpreted; that the WTO Secretariat will be able to actively encourage accelerated LDC implementation of the "correct" TRIPS standards; and that all LDCs will have in place on July 1, 1995 the "black box" process required by Article 70(8) for the filing of patent applications for pharmaceutical and agricultural products. In this regard, the U.S. should urge that a conference of WTO signatories be convened as soon as possible after the Marrakesh meeting to consider possible approaches, such as a single filing system akin to the current system under the Patent Cooperation Treaty, for the implementation of Article 70(8) and the establishment of a monitoring system to ensure that all affected LDCs have in place a functioning "black box" process on July 1, 1995. Finally, the IPC believes that an active U.S. involvement in the establishment of the TRIPS

regime will serve as a clear signal that we intend to pursue our TRIPS rights as they become available to us in the WTO.

Given the pivotal role that panels and the Appellate Body will play in the new WTO dispute settlement process, the United States must ensure that the roster of panelists and the seven person Appellate Body include specialists from the U.S. and other developed countries whose expertise in intellectual property is not limited to academia or governmental service but includes private sector experience. It is the intellectual property counsel of U.S. industry who have acquired the relevant expertise that will be especially valuable when WTO panels and the Appellate Body are called upon to make a judgment whether a national law, regulation or practice violates the TRIPS Agreement.

- (ii) World Intellectual Property Organization (WIPO) - Article 68 of the TRIPS Agreement calls on the TRIPS Council to seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with WIPO bodies. The IPC believes that the WTO Secretariat should be encouraged to work out suitable arrangements with WIPO officials to assist the LDCs in meeting their TRIPS commitments on an expedited basis. It would be a shame if the extensive intellectual property expertise that resides in WIPO would not be used in support of TRIPS.

The successful completion of the TRIPS negotiations was the result of the close cooperation between officials of both branches of our government and the U.S. private sector. Such cooperation must continue as we develop and implement the new intellectual property strategy. The IPC will also continue to work with its European and Japanese colleagues to complete the TRIPS agenda. The creative and inventive industries of Europe and Japan stand to lose as much as U.S. industry from the substantive gaps and the overly long and discriminatory transition periods in TRIPS. The IPC will urge them to undertake parallel efforts in the LDCs to fill these gaps and accelerate LDC implementation of the TRIPS standards. The IPC will also seek their cooperation and that of their governments and the EU Commission in the development of the TRIPS regime in the WTO, by, for example, working with the United States to gain the correct interpretations of the ambiguous provisions of the TRIPS text.

The IPC is also in the process of thinking through on how best to meet the GATT panel's decision mandating changes in Section 337. Section 337 has proved to be effective in stopping in a timely fashion infringing imports at the border and the IPC, therefore, believes that any proposals must retain the essential features of Section 337.

3. Conclusion

As I have indicated, the IPC supports the implementation of the TRIPS Agreement. It, however, also believes that a comprehensive strategy, which may require the redrafting of U.S. statutory authorities, must be developed not only to "complete" the TRIPS negotiations but also to effectively repel the continuing assaults on our intellectual property. U.S. industry cannot and will not complacently look beyond the lengthy and discriminatory transition periods as if they were a mere inconvenience. Neither will U.S. industry sit idly by as the very foundation of U.S. competitiveness, creativity and job growth -- its intellectual property -- is misappropriated abroad. The IPC stands ready to work with the Congress -- and especially this subcommittee and its counterpart in the Senate -- and the Administration in the development of a comprehensive intellectual property strategy for the 21st century.

Chairman GIBBONS. Thank you.

I am appreciative of the fact that you all went into this negotiation with a great deal of skill and determination. Frankly, there were many times during the 7 years I did not think we were going to get any of this at all. So I am very pleased that we got as much as we did.

But as I see this, from my perspective, it is just a part of a continuing process of trying to develop fair international rules, enforceable rules that we can all live with. So I have the same disappointments that you do that it is not a perfect agreement, but it is so much better than what we started with and so much better than what I feared a few times during the negotiations we would ever get. Like you, I celebrate what we have done.

We will need to continue to work with you. Mr. Smith, if you would, would you elaborate a little more, or some of the rest of you elaborate a little more about what you think is the strategy that we must follow in order to capitalize on what we have succeeded in here and what we need to do to close the gap on those areas in which we did not succeed? Each of you referred a little to continuing ongoing strategy. Would you lay out for me what you think the strategy ought to be?

Mr. SMITH. I think there are a couple of elements, Mr. Chairman. First, I think we need to carry forward, particularly in the next year and a half before the WTO agreement comes into effect, a very aggressive bilateral program to try to sweep into the community of protection on the intellectual property side all those countries that are on the verge. That program has to be very tough and I think it also has to include reauthorization of the GSP Program. We feel very strongly that GSP would become a very powerful tool as we move into the future.

I think, as the administration and as the President have said on many, many occasions, U.S. economic, foreign, defense policy, and security policy are all becoming, in effect, one, and key to all of that is to ensure that the ability of the United States to be competitive economically in the rest of the world is an essential component of all those policies. And to ensure that this program moves forward, we need to look at all the carrots and sticks through which we deal with our foreign partners, not just trade.

I think an inventory of all those things would be very useful, particularly at this moment in the period before the new round goes into effect, to begin to telegraph to other countries that the United States will not continue to unilaterally provide benefits unless there are reciprocal benefits coming the other way.

Chairman GIBBONS. I want to ask you about the GSP Program, and perhaps others on the panel about the GSP Program. As you know, we have extended it without any changes. Are there changes that you think ought to be made in the GSP Program for the future, or what are your feelings about it?

Mr. SMITH. You have a date coming up where we will all focus completely on that question and, quite frankly, we have not come up with our full views yet. But I would say that we do have some ideas about coordinating the procedure of the GSP Program along with special 301, to make it more workable and more in combina-

tion. But we do have some ideas and we will be more than pleased to relate them to the Subcommittee on that date.

Chairman GIBBONS. In that regard, I have suggested back in the NAFTA negotiations that we temporarily extend NAFTA to the Caribbean, and that we give the Caribbean nations on a nation-by-nation basis the opportunity to extend it past a gratuitous period of 3 years, hoping that we could negotiate with them on the specifics of their own laws where we thought they needed to make changes.

I realize there is an accession provision in NAFTA that may be helpful. Are you all prepared at this time to comment any about NAFTA and the extension?

Mr. HACKMAN. Let me just briefly comment on that, if I may, Mr. Chairman. We would agree that NAFTA provides very good leverage to the United States in terms of the potential for accession by other countries. In particular, NAFTA accession could be helpful with respect to pushing those countries with whom we have been engaged in negotiations for some period of time, to either to implement additional intellectual property protection in their national legislation or to enforce better the statutes that they already have on the books.

I think in terms of NAFTA extensions one could say, as an example, that the United States should require a downpayment in terms of improved intellectual property protection from those countries before they can even come to the table, before we would even begin to open up negotiations with those countries. I think this might be an effective vehicle to perhaps getting them to move off the dime.

Chairman GIBBONS. Go ahead.

Mr. SMITH. Mr. Chairman, on our part, we have met with many of the ambassadors from the CBI countries and we provided to them our feeling that many of them have not yet taken the actions domestically to prevent the kinds of piracy that they need to fix. Satellite piracy is one of the principal problems that exists in that region, because they are in the footprint of our satellites.

I sense some real cooperative spirit there, and we would like to work more closely with the CBI countries in connection with your effort on NAFTA parity, to see if we could move that agenda forward. Of course, from our point of view, we feel that we have to see better protection as part of that whole package.

Chairman GIBBONS. I would agree with you. Right now, we do not really have any leverage with them except maybe offering them NAFTA-type benefits, if they will beef up their intellectual property arrangements. That was part of my strategy in proposing legislation.

I have talked with these countries, with their representatives here in Washington, and I would hope that we could get something done in that area. I want to see you help. I also want to see them help, because they have turned out to be fairly good trading partners of ours. We have a surplus of trade with them. They are not very big and they are pretty poor. They have got changes that they need to make. I think they are willing to make changes, if we can just get some outreach to them.

Sander, would you like to inquire?

Mr. LEVIN. Just briefly, Mr. Chairman.

Mr. Chairman, I believe this panel has very much struck the right notes, that there have been some important steps forward through the Uruguay round, but there are some important steps that remain to be taken, and if they are not taken, that the ground could in some cases kind of fall out beneath us.

Therefore, the next couple of years are very important, surely in the areas which remain to be negotiated. In that regard, it is not only important to be very clear in the negotiations, but to try to create the atmosphere that convinces people that they should move forward to try to cure some of the defects or some of the omissions.

Let me ask you, have you been in active touch with the administration, as the implementation language is being put together? Have each of you had effective communications? You have. Have you also been discussing with them your feelings about 301 and super 301? You have.

I think, Mr. Chairman, that is going to be important, that we are going to need the input of industry, as the administration and the Congress put together the implementation language, and I think we have to expect that there may be some differences of opinion. It is not going to be just snapping fingers and it all will fall into place. There are going to be different perspectives, different interests, and some will want more, some will want less. In some areas, the implementation language will be able to supplement what was done. In other cases, there is a hope that it will more than supplement what was undertaken.

I think your input in this hearing is really very important and will be significant. There is not much time, Mr. Chairman. You set out a schedule for implementation action that is pretty rigorous, and I would think that means the next few weeks are critical.

So I think your notes of support for the steps that were taken, but concerns about what remains left to be done, all of that is right on target, and I hope all of us will work together to try to make sure what was done is carried out, and what was not done can be effectuated.

In each of your areas, it was a real struggle, and in some of the cases there was substantial progress beyond the Dunkel text. The Chairman worked with others on the committee, including the chairman of the committee, to try to move beyond Dunkel. But where that did not happen, the cause remains to be fulfilled.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you.

I said a little earlier, and I want to repeat again, that we are actively considering legislation at this moment on all of these areas, and so I encourage all members and certainly all outside private sector people to be in close touch with us and our staff and give us your input. I cannot promise we will accept it all, but we will certainly consider it all, and the process is going to be very open and very complete.

Unless there is more from the panel, let me say that this concludes the hearing today. We will continue tomorrow at 1 p.m. in room B-318. Mr. Nader, who was scheduled for today, has asked to be considered a little later on in the hearings.

Thank you very much.

[Whereupon, at 12:11 p.m., the hearing was adjourned.]

TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, FEBRUARY 2, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:09 p.m., in room B-318, Rayburn House Office Building, Hon. Sam Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. Good afternoon, ladies and gentlemen. This is not my idea, to have a hearing in this room, I want you to know. I will say that in self defense. I wish we had more room, but the Ways and Means Committee is out of space right now. We have other hearings going on on other subjects, so we are relegated to this very small, cramped space.

As you know, this is a continuation of hearings on the results of the Uruguay round negotiations that were begun the other day by the full committee and continued yesterday by the subcommittee. The Uruguay round implementation has the economic potential of being one of the largest decisions that will be made around here. It also has other characteristics that we will discuss. We want to get everybody's view before we go into the actual markup of this proposal.

We welcome Congressman Jim Kolbe today. Mr. Kolbe is a fine Representative from Arizona, but he is more than that, by far. He is a leading proponent of free and open markets and has done a distinguished job here in the Congress. His most recent performance in the NAFTA debate and the preparation for NAFTA has written a fine page in American history.

Jim, we welcome you.

STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you, Mr. Chairman. I appreciate your kind remarks, and I would return them to both you and the ranking Republican in terms of your leadership and your efforts on NAFTA.

Mr. Chairman, it is a pleasure to testify again before this subcommittee on a new issue, one that is a vital trade agreement, vital for U.S. workers and the American economy. The Uruguay round offers the United States a unique opportunity to breathe new life into the world trading system.

Mr. Chairman, with your permission, I will submit a complete statement for the record and will make my summary of my remarks here quite brief. Mr. Chairman, I might add, since I had the wrong room as well, my other copies of my statement are on the way over here at this moment.

Chairman GIBBONS. We will put all the statements today, yours included, in the record following your own testimony.

Mr. KOLBE. Thank you. In my brief verbal remarks to you, I would like to just concentrate on the Uruguay round's foreign policy and economic importance and the priority of a quick and clean implementing bill, overcoming the estimate of revenue loss and accounting for increased U.S. economic growth and some of the important reasons for extension of fast track.

First, on the Uruguay round itself, even as we celebrate completion, the achievement of completing the Uruguay round, I am compelled to express some disappointment in the lack of meaningful offers that have not been put on the table by our trading partners in certain key aspects, most notably in that of nonferrous metals and wood products.

Our trading partners, notably Japan, have got to recognize that the round's market access negotiations are not complete and greater efforts to reduce these tariffs and open markets must be made if implementation by Congress is to be assured.

Mr. Chairman, allow me to point out the time limits of the conclusion of the Uruguay round. After a dozen tough years of economic restructuring, defense downsizing, and continued State and Federal efforts at deficit reduction, the American economy today is poised to reap substantial economic rewards if this agreement is successfully implemented.

These economic measures that we have taken in this country and that companies have taken in this country demonstrate, I think, the strength of the American economy, especially relative to our G-7 trading partners, who are still struggling to turn the corner on their own recessions. It gives us an unprecedented opportunity to capture the benefits of a more open, rules-based world trading system.

Apart from our own economic well-being, the Uruguay round will also contribute to U.S. foreign policy and national security goals in a postcold war era.

While the President and Congress have many priorities for the remaining half of the 103d Congress, we should keep in mind that the implementation of the Uruguay round constitutes the only significant progrowth initiative we are likely to consider over the next several months.

So the same coalition that you referred to a moment ago, the coalition that helped to pass NAFTA, has got to be brought together again in this struggle to implement a clean, quick Uruguay round bill of implementing legislation with an extension of fast track negotiating authority for unfinished multilateral agreements and future bilateral free trade agreements.

In this connection, a warning, Mr. Chairman. Some in Congress will see the Uruguay round implementing legislation as an opportunity to push a unilateral trade strategy designed more for reinstitution of trade barriers than achieving market-opening re-

sults. For others, it is an opportunity to use U.S. dumping laws and institutions to give relief from import competition to specific industrial sectors without taking into account the additional costs of such a strategy for American consumers, workers in other industries, and most importantly, workers in export industries.

Last year, Ambassador Kantor said that we must not neglect U.S. economic and trading interests because of foreign policy and defense concerns. I agree with that statement. While foreign policy defense and economic concerns continue to be linked to this postcold war environment, we must place greater emphasis on securing open markets for U.S. workers.

For that reason, my support for this legislation would rapidly diminish if an implementing bill were to contain extraneous trade legislation designed to appease the growing and misguided protectionist movement. Such legislation would ultimately kill job opportunities in our most competitive, export-oriented industries, as well as subvert our national security interest to maintain a viable world trading system.

Specifically, such legislation that might be contemplated in this regard are proposals on the creation of a super 301 for environmental and industrial relations issues and others that have suggested changes to our antidumping laws. These proposals are contrary to the intent, the spirit, and, I think, the letter of the Uruguay round of GATT negotiations that has just been completed.

That was made abundantly clear to me this weekend in Switzerland at the World Economic Forum, where I met with more than 30 trade ministers from around the world. Such changes could undermine the world trading system at a time when it needs a new champion to provide leadership in its implementation and enforcement among member nations.

One of the most difficult issues to address in this legislation will be accounting for the impact of tariff reductions on the Federal budget, or scoring, as we know it. The Budget Enforcement Act [BEA] requires the President and Congress to score the round as causing a decrease in Federal revenues and an increase in the Federal deficit, if not offset as required by the BEA's pay-as-you-go procedures. That is, by the way, a provision I strongly agree with.

As a member of the Budget Committee, however, I would challenge this method of scoring tariff reductions on imports without taking into account the additional revenues created by economic growth that results from foreign governments concurrently reducing their tariffs on our exports.

NAFTA is a case in point. CBO estimated that the U.S. economy would be two-tenths of a percent larger each year if NAFTA was implemented. While that may not seem like an awful lot, in a \$6 trillion economy, it amounts to about \$73 billion added to the economy.

Revenues to the Federal Government approach 19 percent of GDP and have been within a narrow band around that number for decades. Therefore, of the \$73 billion in additional economic growth, roughly \$14 billion of it comes to the Federal Government in added tax revenues.

For the Uruguay round, the situation is similar, but the benefits to the U.S. economy dwarf those, of course, of NAFTA. An estimate

in 1990 forecasts an annual increase of 2½ percent of U.S. GDP or \$130 billion annually when the round is fully phased in. Had the Uruguay round been completed at that time, then the additional annual Federal revenues would have been close to \$25 billion by the year 2000.

The conclusion, Mr. Chairman, to that point, is that I think the time has come to seriously consider waiving the Budget Act and changing the scoring of trade bills under the BEA so as not to deny the obvious and significant economic growth that free trade bestows. I frankly think the system we have right now just makes no sense at all.

Finally, on fast track extension, since 1974, fast track negotiating authority for the President has been the launching mechanism for U.S. efforts to open markets for our exports and to help U.S. workers. Again, the Uruguay round, I think, is further proof of its success.

Despite the benefits the Uruguay round brings, there is still work to be done in multilateral and bilateral forums to ensure our opportunity to compete in the global marketplace. As part of the Uruguay round, the United States was unable to successfully conclude multilateral negotiations on civil aircraft and steel, as well as financial and maritime services. Multilateral fast track negotiating authority is desirable for these sectors if we are to reach agreement in those areas.

I would add, however, that fast track is not so vital that we should extend it only with a heavy price tag of super 301 language. For myself, that is not a price I am prepared to accept.

Mr. Chairman, even as we continue to push forward on a multilateral basis, we should continue to work on a bilateral or regional agreement in case these multilateral efforts fail.

After seven rounds of trade liberalization and 7 years of difficult trade talks on this last round, I believe, and many in Europe this weekend suggested the same to me, that perhaps we have exhausted the traditional round system of market access negotiations. In fact, the Uruguay round revealed real limitations on how far the larger and more diverse GATT membership was prepared to go in liberalizing trade and investment.

For that reason, the implementing bill should include fast track for bilateral negotiations. The two reasons which deserve special attention in this regard are Latin America and Asia.

Mr. Chairman, that concludes the remarks that I wanted to share with you today. As I said, my whole statement will elaborate these in more detail. I appreciate this opportunity to share these thoughts with you.

[The prepared statement follows:]

**STATEMENT OF HON. JIM KOLBE
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. Chairman, once again it is a pleasure to testify before you again on a trade agreement vital to U.S. workers and the American economy. At a time when the world economic growth is stagnating, the successful conclusion of the Uruguay Round offers the United States a unique opportunity to breath new life into the world trading system and foster a global environment where trade, rising income, and greater consumer access to goods and services will benefit the millions of working men and women of the global economy.

My testimony today will focus on several important aspects of the legislation you will later craft this year, including the Uruguay Round's foreign policy and economic importance, the priority of a quick and clean implementing bill, overcoming the estimate of revenue loss and accounting for increased U.S. economic growth, and several important reasons for the extension of fast track.

INTRODUCTION

After seven years of tough negotiations, the efforts and strong leadership of two Republican Presidents and President Clinton have resulted in a trade agreement which will substantially expand U.S. export opportunities, stimulate U.S. job growth, and increase the standard of living for both current and future generations of Americans. I want to especially acknowledge the work of Ambassador Kantor, and his deputy, Rufus Yerxa, for their herculean efforts in concluding the largest trade liberalization initiative ever undertaken. It is a truly remarkable accomplishment.

However, even as we celebrate this achievement of Ambassador Kantor, I am compelled to express my disappointment in the lack of meaningful offers submitted by some of our trading partners in key aspects of the trade talks, specifically the market access negotiations for non-ferrous metals (copper and lead) and wood products. These trading partners, most notably Japan, must recognize that the Round's market access negotiations are not complete and greater efforts to reduce these tariffs and open markets must be made if implementation by Congress is going to be assured.

ECONOMIC IMPORTANCE

Mr. Chairman, please allow me to first point out the timeliness of the conclusion of the Uruguay Round. After a dozen tough years of economic restructuring, defense downsizing, and continued state and federal efforts at deficit reduction, the American economy is poised to reap substantial economic rewards if this agreement is successfully implemented.

Alan Greenspan, chairman of the Federal Reserve, recently gave a favorable assessment of the American economy. Employment, business investment, and gross domestic product have increased significantly since last year. Interest rates and inflation continue to remain low and productivity gains are expected to continue.

These economic measures demonstrate the strength of the American economy, especially relative to our G-7 trading partners who are struggling to turn the corner on recession. It gives us an unprecedented opportunity to capture the benefits of a more open, rules based world trading system. It can provide substantial job and GDP growth to an American economy still struggling with excessive unemployment and high fiscal deficits. A study by the Stern Group (October, 1990) estimated that a successful conclusion to the Uruguay Round could add as much as \$130 billion annually to the U.S. economy by the end of the 1990s.

FOREIGN POLICY IMPORTANCE

Apart from our own economic well being, the Uruguay Round will also contribute to U.S. foreign policy and national security goals in a post-Cold War era. By reducing trade barriers and strengthening the economic relationships among developed and developing nations, the Uruguay Round will raise the standard of living for all nations; and thus, increase the likelihood of continued peace.

More than fifty years ago, just prior to the outbreak of World War II, Secretary of State Cordell Hull said the following about the importance of having a global environment fostering free trade:

A thriving international commerce, well adjusted to the resources and talents of each country, brings benefit to all. It keeps men employed, active and usefully supplying the wants of others. It leads each country to look upon others as helpful counterparts to itself rather than as antagonists.

If the United States and other GATT member nations successfully implement the Round, then Russia, the other members of the Commonwealth of Independent States, and the countries of Eastern Europe, will have the potential of integrating with a more vibrant world trading system. We cannot ignore this prospect which offers the United States another avenue, in addition to the President's proposed "Partnership for Peace", to reduce the economic and political tensions with former Communist countries.

QUICK IMPLEMENTATION OF THE URUGUAY ROUND

While the President and Congress have many priorities for the remaining half of the 103rd Congress, we must keep in mind that implementation of the Uruguay Round constitutes the only significant pro-growth initiative we are likely to consider over the next several months.

Through the efforts of a bipartisan congressional coalition and the strong leadership of the President, Congress passed the North American Free Trade Agreement. That same coalition must be brought together again to implement a clean, quick Uruguay Round bill with an extension of fast track negotiating authority for unfinished multilateral agreements and future bilateral free trade agreements. Emerging partisan differences over health care, campaign finance, and welfare reform must not be allowed to sidetrack this consensus. To do so is to risk its job creating and important consumer aspects.

A CLEAN IMPLEMENTATION OF THE URUGUAY ROUND

Some in Congress will see the Uruguay Round implementing legislation as an opportunity to push a unilateral trade strategy designed more for reinstitution of trade barriers than achieving market opening results. For others, it is an opportunity to use U.S. dumping laws and institutions to give relief from import competition to specific industrial sectors without taking into account the additional costs of such a strategy for American consumers, workers in other domestic industries, and ultimately workers in export industries.

Last year, Ambassador Kantor stated that past administrations have often been accused of neglecting U.S. economic and trading interests because of foreign policy and defense concerns. He said the days when we could afford to do so are long past, that our national security depends on our economic strength in the post Cold War world.

In general, I agree. While foreign policy, defense, and economic concerns continue to be linked in this post Cold War environment, we must place greater emphasis on securing open markets for U.S. workers.

For that very reason, my support for this legislation would rapidly diminish if an implementing bill were to contain extraneous trade legislation designed to appease the growing and misguided protectionist movement. Such legislation would ultimately kill job opportunities in our most competitive, export-oriented industries, as well as subvert our national security interest to maintain a viable world trading system.

Specifically, such legislation could be the contemplated proposals on the creation of a Super 301 for environmental and industrial relations issues and certain changes to our anti-dumping laws. These proposals would have the United States march to a different cadence from the intent, spirit, and letter of the Uruguay Round. Furthermore, they could undermine the world trading system at a time when it needs a new champion to provide leadership in its implementation and enforcement among member nations.

I have just returned from the World Economic Forum in Europe where I met with scores of world trade officials. Without exception, they were astonished that the U.S. could be considering the addition of such provisions which so clearly could undermine the new agreement before the ink is even dry on the draft.

We should remember that a thriving system of international commerce based on the principles of free trade is compatible with improving the global environment and raising the standard of living for all the world's citizens. Furthermore, there may be other policy options the U.S. could undertake that are consistent with our multilateral obligations and ultimately more effective for achieving environmental protection and respect for basic worker rights.

For instance, we must recognize the inter-relationship between trade and the environmental issues in the international trading system specifically in those areas concerning sanitary, phyto-sanitary, and standards-related measures. We dealt with those issues effectively during the NAFTA negotiations and we can begin to address some of them in a broader GATT context without subverting the process to protectionist intentions. When it concerns the establishment of sound and reasonable rules governing world trade, U.S. workers and consumers will always benefit from greater certainty as well as enhanced environmental protection.

EVALUATING GROSS DOMESTIC PRODUCT AND FEDERAL BUDGET IMPACTS

As we work in a bipartisan spirit, one of the most difficult issues to address in this legislation will be accounting for the impact of tariff reductions on the federal budget. The method by the Budget Enforcement Act (BEA) requires the President and Congress to score the Round as causing a decrease in federal revenues because of the reduction in U.S. tariffs. This would lead to an increase in the federal deficit if not offset as required by the BEA's pay-as-you-go procedures -- a provision I strongly agree with, I would add.

As a member of the Budget Committee, I would challenge this method of scoring tariff reductions on imports without taking into account the additional revenues created by economic growth that results from foreign governments reducing tariffs on our exports. Higher U.S. exports generate economic growth, jobs, wages, and ultimately additional taxes for the federal government.

NAFTA is a case in point. The Congressional Budget Office estimated that the U.S. economy would be .2 percent larger each year if NAFTA was implemented. While that might not seem like much, in an economy that exceeds \$6 trillion, it amounts to an estimated \$73 billion addition to the economy. Revenues to the federal government approach 19 percent of GDP, and have been within a narrow band around that number for decades. Therefore, of the \$73 billion in additional economic growth, roughly \$14 billion come to the federal government in added tax revenues.

For the Uruguay Round the situation is similar, but the benefits to the U.S. economy dwarf those coming from NAFTA. An estimate in 1990 by Paula Stern and Paul London forecast an annual increase of 2.5 percent of U.S. GDP, or \$130 billion annually, when the Round is fully phased in. Had the Uruguay Round been completed in 1990, the additional annual federal revenues would have been close to \$25 billion by the year 2000. The same would be true today.

As we work in a bipartisan manner to implement the Round, we should seriously consider waiving the Budget Act and changing the scoring of trade bills under the BEA so as not to deny the obvious and significant economic growth that free trade bestows.

REASONS FOR EXTENSION OF FAST TRACK NEGOTIATING AUTHORITY.

Since 1974, congressional extension of "fast track" negotiating authority to the President has been the launching mechanism for U.S. efforts to open markets for U.S. exports and U.S. workers. The Uruguay Round is further proof of its success.

Despite the benefits the Uruguay Round brings, there is still work to be done in multilateral and bilateral forums to insure our opportunity to compete in the global marketplace. As part of the Uruguay Round, the United States was unable to successfully conclude multilateral negotiations on civil aircraft and steel as well as financial and maritime services. Some multilateral negotiating authority is desirable for these sectors if we are to reach agreement in these areas. I would add, however, that fast track is not so vital that we would extend it only with a heavy price tag of Super 301 language. That is a price I am not prepared to accept.

Even as we push forward on a multilateral basis, we should continue to work on bilateral or regional agreements in case our multilateral efforts fail. After seven rounds of trade liberalization and seven years of difficult trade talks, I believe we may have exhausted the traditional "round" system of market access negotiations. In fact, the Uruguay Round revealed real limitations on how far the larger and more diverse GATT membership was prepared to go in liberalizing trade and investment.

For that reason, the implementing bill should include fast track for bilateral negotiations. Two regions deserve special attention in this regard.

ASIA

Forty percent of our trade is with Asia, half again as much as with Europe. By the year 2000, Asia will have nearly a billion consumers in middle-class households. That's a number equal to the entire population of North America, South America, and Europe. Four hundred

million of them will have disposable incomes equal or above to those living in the West today. Asia is likely to account for over half the growth in world trade between now and the year 2000 and the region includes the world's fastest growing economies according to the OECD. Asia is in the early stages of a consumer boom.

It has also begun an infrastructure modernization program involving billions of dollars of capital investment in such products as power plants, telephone switching equipment, airplanes and air traffic control and urban improvements. Asia is promising terrain for U.S. exports in our most competitive industries, including the telecommunication, semiconductor, aviation, medical equipment and pharmaceutical industries.

LATIN AMERICA

With regard to our own hemisphere, members of this committee know that our trade and foreign policy relationship with Latin America is vital to our national security relationship.

With lower tariffs, the U.S. exports to Latin America rose 27 percent in 1992. Each one percent of added economic growth to this region results in \$5 billion worth of additional U.S. exports, compared with only \$1 billion for the same rise in Japan's growth rate. Latin America and Europe were the only two regions of the world with which the United States had trade surpluses last year.

Half of Latin trade now is with the United States; that means that fifty cents of every dollar that Latin countries spend on foreign goods goes to U.S. workers, companies, and investors. Negotiating free trade agreements beyond Mexico would allow U.S. workers to send duty-free cars and computers to Central and South America and permit U.S. consumers to buy duty free Columbian flowers, Chilean grapes, and Argentine beef.

With a continued willingness to engage Latin American nations as economic partners, the U.S. harvests other benefits, too. Economic cooperation strengthens hemispheric political cooperation, allows for combined efforts to foster greater respect for human rights and democracy, and reduces illegal migration pressures and drug trafficking.

Mr. Chairman, I would like to conclude by saying I appreciate this opportunity to share these views with your subcommittee on this important trade agreement and on U.S. trade policy. You have been a champion of free trade and fighting for open markets for U.S. workers for years. I have enjoyed working with both you and Congressman Crane on other trade issues and look forward to continuing that relationship.

Chairman GIBBONS. Thank you very much, Jim.

This morning at a gathering of many of the members of the Ways and Means Committee Subcommittee on Trade, we had a discussion about the budget scoring. We agreed there amongst ourselves that we would proceed in a bipartisan manner to try to work out the scoring mechanism and see if we couldn't involve the Budget Committee and perhaps the administration in it also. We may be calling on you and your leadership to help us work this out.

Mr. KOLBE. I appreciate that. I am pleased to hear that that is the case, and you can be sure that you will have my support in that and will do everything I can to work with you, Mr. Chairman, on that. I think it is safe to say that there will also be a bipartisan coalition on the other side, of those who oppose trade in general and those from a budget standpoint who will be opposed to this, and that we will have some difficulties to overcome.

Chairman GIBBONS. Yes, but as you so accurately pointed out, this is not a revenue loser, this is a revenue gainer.

Mr. KOLBE. Every economist tells us that.

Chairman GIBBONS. I understand the strictures of the PAY-GO system, but they fall flat on this.

Mr. KOLBE. Mr. Chairman, if I might just add, I would say the key to that is we have to somehow convince other members that this is not an opening in the door to trying to take everything out of the budget in terms of how we score it and taking it off budget, or waiving it from the pay-as-you-go-provision.

Chairman GIBBONS. Yes. We talked, also, a little about what to do about GSP and its interrelationship with the Uruguay round. Some of our witnesses yesterday suggested that we include in the fast track legislation a markup on the GSP language. The extension of GSP expires in September of this year, so I think it might be logical that we attack both of them together. There are some people who say we didn't get all that we should have gotten legitimately under the Uruguay round, and with some careful work on the GSP we can perhaps close that gap some. I hope they are correct.

So far, I don't detect any great enthusiasm—I say, so far—to use this as a catchall for a lot of other things. I think we ought to take a look at the NAFTA and perhaps include some kind of language that brings the Caribbean into parity with NAFTA in this legislation. The administration considered that last time, but because NAFTA was so controversial in itself, they decided not to add any more to it.

We will take your views to heart. You made some good suggestions there and I thank you very much.

Mr. KOLBE. Thank you, Mr. Chairman. The danger, as you said, is that we load this down with too much. I just heard this morning about the possibility of doing something on MFN in this legislation, and I think that if we get a lot of things added in here, we are going to freight this down with an awful lot of baggage.

But certainly, one thing that does make sense would be something that would allow for some kind of negotiations for fast track accession. That was certainly contemplated when we adopted NAFTA, and I think that we should move forward on that, whether

it is separate or whether it is in this, and I appreciate your comments.

Chairman GIBBONS. I would like to do something about MFN. I think we need to, but I don't think this is appropriate legislation for it. It needs a lot more consideration than we have currently given it, and it could turn out to be extremely controversial.

Mr. KOLBE. I think that is a safe statement.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. I just want to congratulate our colleague for his commitment. I agree wholeheartedly with his testimony.

One thing I think that you mentioned that is also very important is to get that extension of fast track authority for future multilateral or bilateral agreements, as you know. I think you are a co-sponsor of some of our Pacific rim MFN free trade agreements.

Mr. KOLBE. Yes, I am.

Mr. CRANE. I salute you for the commitment, Jim. Hang in there, and let us hope we can pull this coalition together.

Mr. KOLBE. Thank you, Mr. Crane.

Chairman GIBBONS. Bill.

Mr. THOMAS. Mr. Chairman, I refuse to take personally the fact that my microphone has no on-off switch on it. Are they sending a message? They are very subtle up here in various ways. [Laughter.]

Chairman GIBBONS. I see the staff has followed my instructions. [Laughter.]

Mr. THOMAS. Notwithstanding that difficulty, Jim, you are one of the folks who makes the system go. Obviously, we operate on a committee structure, but I absolutely believe that if it weren't for folks like you, and principally you, NAFTA could not have gotten the vote, principally on our side of the aisle, simply because we need more people focused on the issues than just those that are on the particular committees. I know some folks resent that and they get into turf and jurisdictional matters, but some things are more important than others.

I personally want to thank you for all the effort that you have put in.

Mr. KOLBE. Thank you, Mr. Thomas.

Mr. THOMAS. Your statement is absolutely correct, and I think you will find that it is shared by virtually everyone on this subcommittee. Fast track makes sense. It is hand-in-glove with the whole approach of an extension of negotiating authority for GATT or any other multilateral or bilateral agreement. But to the degree that we go into specific provisions on MFN or GSP or anything else, that is baggage.

I have some concern, as everyone else does, about the budget rules. Let me tell you, as ranking on health, I bump into the budget rules every day because we can't count any preventive aspects of health as a savings, under the budget rules. It makes no sense whatsoever to count GATT as a spender.

But I do want to share with you some concerns, and I guess it is the old Frenzel in me that he clearly planted a long time ago. Just because this is good and worthy, we may not necessarily want to change it because something else that isn't good and worthy, could be lined up right behind it.

Frankly, \$11 billion isn't a lot of money to a worldwide trading arrangement that we have to approve. I think it is going to be a moneymaker, but obviously, if we can come up with a creative way of dealing with it that doesn't leave the sword with two edges, I am interested. Most of the solutions I have seen leave us with a two-edged sword and I am afraid about the pendulum coming back this way with the sword attached to it.

But otherwise, you are absolutely correct, and I just want to thank you personally for all the effort you have put in over and above your normal assignments, which you do excellently as well.

Mr. KOLBE. Thank you, Mr. Thomas, very much for your kind remarks. I share the feeling about you and the efforts you did with us on NAFTA. That was very instrumental to having a successful implementation of it.

I think you are right about that. If we can't do a budget waiver for this, then we are going to have to find ways to pay for it, which obviously is going to be tough, considering the number in Congress that are not going to want to consider new taxes for it. Finding it in other discretionary areas is not going to be easy to do, but we are going to have to do it.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, sir.

We will go next to Mr. Nader.

Mr. NADER, we welcome you and you may proceed as you wish. Your written statement will be printed in full. We look forward to your testimony. I might say that I read all your testimony last night.

STATEMENT OF RALPH NADER, CONSUMER ADVOCATE

Mr. NADER. Thank you very much, Mr. Chairman. You are a unique person here on Capitol Hill, probably one of the few people who has actually read this 550-page—

Chairman GIBBONS. I didn't read that. I read this. [Laughter.]

What are you holding up there?

Mr. NADER. This is the GATT, for sale by our Federal Government at \$30 a copy.

Chairman GIBBONS. A bargain.

Mr. NADER. It costs them \$3 to produce and about \$3 to mail.

Chairman GIBBONS. We have a budget deficit, Ralph. We have to cut it.

Mr. NADER. I know. Make up for some of those tariff losses. [Laughter.]

Mr. NADER. I would like to submit my statement for the record and summarize it, Mr. Chairman and members of the subcommittee.

Chairman GIBBONS. Certainly.

Mr. NADER. There are obviously many dimensions to the GATT which will be discussed and have been discussed before the subcommittee. Many of the economic interests, of course, are interested in certain provisions, whether they relate to timber or oil and gas, petrochemicals, textiles, and what have you. I would like to focus on the democracy dimension of these trade agreements almost exclusively.

One can only remember, in this context, Thomas Jefferson's comment when he said, the function of representative government is to counteract the "excesses of the monied interests." So while Congress certainly needs to take into consideration the economic dimensions of these trade agreements, it is uniquely empowered and invested with the need to focus on the democracy aspects.

Trade agreements should be evaluated in terms of whether they damage or restrict our democratic structures and procedures. Trade agreements that damage democracy here and/or abroad are trade agreements that not only violate fundamental principles of human rights and participation and access for the millions of people who have to live by the results, but they also undermine economic development.

There is no superior engine for fair economic growth than democracy, and if anybody wants to challenge that, they may compare the history of Brazil with that of the United States in terms of comparable size and resources, et cetera, one having more democracy than the other, compare those GNPs.

This trade agreement is the largest and the most sweeping in world history. It is clearly a system of international governance, first and foremost. It is not just tariff reductions and other parcels of reducing trade and investment barriers. It is a system of international governance. We give up some sovereignty every time we sign or agree to a trade agreement. The question is, how much should we give up, and when and where?

Heretofore, the texts of both NAFTA and GATT have been submerged by, in my judgment, too much self-congratulatory hoopla with the stereotype of free trade making these giant and complex agreements appear as if they are articles of faith rather than propositions to be examined by a vibrant Congressional and democratic process.

The GATT, of course, establishes a new international organization that is a legal entity on the scale of the United Nations, the World Trade Organization [WTO]. This WTO has much more powerful sanctions and can operate in a much more unilateral way vis-a-vis its member countries than the old GATT.

So the comparison of old GATT with new GATT is simply that the new GATT is more penetrating into nontariff areas, noninvestment areas, such as consumer, workplace, environment, et cetera, moving into intellectual property, agricultural services, but it also has many more powers and authorities.

I would like to compare, very briefly, six democratic procedures that Congress has adhered to when it engages in legislation with the kind of procedures that operate in GATT.

First of all, GATT, and let us call it WTO, has a primacy of trade factors and trade imperatives over other important factors that make up a just and abundant standard of living—consumer, environmental, workplace conditions, for example. It is trade that is in a primary role over these factors. These factors are subordinated to the dictates of the trade imperatives. That is clear throughout this document. It starts to be made clear from the preamble all the way through to the workings of the panels, the assignment of trade experts to make decisions that involve environmental health, safe-

ty, consumer, and workplace matters, quite removed from technical trade matters.

Congress does not legislate this way. When you pass an auto safety law or a flammable fabrics law, you do not pass a commercial economic development law and make it primary over health and safety factors. They are on level playingfields. OSHA is a free-standing law. NHTSA is a freestanding agency. So the primacy factor in GATT is quite different from the way Congress has legislated throughout the years.

Second, secrecy. I remember when you were fighting the secrecy sessions of the Labor and Education Committee. I am glad that was noticed in the National Journal article recently, by the way.

Chairman GIBBONS. Thank you. I appreciate all your fine help with that.

Mr. NADER. These trade agreements are excessively secret. There is no justification for having the dispute resolution panels secret in terms of their proceedings, secret in terms of submissions before them, with no requirement that even governments disclose their submissions. It is totally permissive. The dissents are secret. Citizens and other people cannot sit in on the deliberations.

This is quite contrary to the way our courts operate and our Congressional committees operate. Indeed, there is a question of how our freedom of information laws are going to relate to some of the aspects of this secrecy.

Third, participation rights. Under this agreement, only National Governments are the participants. If a State law is being challenged because a country around the world thinks that its toxic control standards are keeping out food or other products from being imported to the United States, it is the Federal Government that represents the State.

If the State is Texas and Ann Richards as the Governor and if the President is Ronald Reagan and the secrecy operates as it is written, it is really an invasion of States' rights. The States do not have participation rights, nor do NGOs or nongovernmental organizations or citizen groups, no matter how relevant and intimate their interest is in terms of health, safety, and economic rights.

In our country, we have the Administrative Procedure Act, we have open public dockets, and we have a broader concept of standing and review before these various agencies, but not in WTO/GATT.

Fourth, appeal. The appeal here from the dispute resolution panels is internal. In our country, due process jurisprudence says that appeals are made to external, independent bodies, called courts, for example.

Fifth, there has been extraordinary difficulty in even getting the documents relating to GATT. Just before New Year's, I spoke with a prominent Member of this body, not this committee, the House of Representatives, and he said that he could not get a copy of the agreement at that time. That was about 2 weeks after the December 15 announcement.

If Members of Congress had difficulty in getting it in time, and it is important to get it in time because the administration tends to give its own spin on this, you can imagine how difficult it has been for citizens. Months they waited for the NAFTA agreement.

They didn't wait as long for this, but it is entirely too expensive and not adequately promoted and placed where people can get hold of it.

Information, Mr. Chairman, is the currency of democracy, and I would urge this committee to ask the GAO to put out a readable summary of this, as they did for the NAFTA agreement. They can do this with considerable expeditiousness before the vote later this year on this trade agreement.

Sixth, trade agreements are much more difficult to revise. Because they are much more difficult to revise, it is very important for Congress to ask itself how much authority is it giving up that is impermissible, and to what extent are the analogies compelling in terms of how we revise Federal laws and how we are expected to try to revise this international agreement, which has the status of a Federal law. The difficulties of revision lock in rigidities that later experience might warrant changing.

Already, old GATT has had an impact along these lines. We have seen challenges by Mexico to our tuna/dolphin protectionist law. We have seen challenges by Canada under the Canada/U.S. trade agreement to Puerto Rican milk safety standards.

There is a challenge now pending from Mercedes through the European Economic Community, which, I might add, was not known to our chief trade representative early this year. This is a challenge to our fuel efficiency standards and our gas guzzling tax. What Mercedes is alleging is not that these standards discriminate against imports, it is that because of the models that Mercedes has chosen to manufacture, there is a discriminatory impact.

Canadian meat inspection equivalency. Canada has filed an amicus on litigation involving asbestos, because they like to export asbestos to the United States. Japan has threatened to press against the U.S. log export restrictions for conservation purposes, et cetera.

So we are dealing here with, one, trade dispute resolution systems that are antidemocratic, with equivalency procedures that are antidemocratic, and with harmonization procedures which are antidemocratic. Coming off this remarkable statement in the GATT, "each member," mainly each nation-state, "shall ensure the conformity of its laws, regulations, and administrative procedures with its obligations as provided in the annexed agreements."

Is it too much to ask, Mr. Chairman, that the administration provide a detailed submission to the Congress in terms of what laws they think will have to be repealed, amended, restricted, and what standards will have to be affected under the GATT?

For example, you have Buy America laws, you have procurement policies by the Federal Government, you have subsidy policies, which is the occasion of a letter from some Republicans to the White House just a couple of days ago.

When we talk about harmonization procedures and equivalency procedures, what does that mean to the average person? I would like to give one quick example.

In 1992, the Department of Transportation initiated negotiations with the counterpart department in Mexico to determine what equivalency would be attached to Mexican truckdriver licensing. This was offered as a technical amendment to the CFR without any open public docket review or participation by interested parties.

The conclusion was that the following Mexican licensing procedures for truckdrivers were deemed equivalent to that of the United States: Every 10 year renewals, driver can drive the truck at age 18 from Mexico, the truck driver does not have to show by training or experience that he or she knows how to drive the particular rig or how to manage the cargo in case of a shifting or other emergency.

California objected, saying this was clearly far weaker than the California truckdriver procedures and licenses, and the Federal Government told California to back off. Otherwise, it would be penalized under the Federal aid highway aid program.

That is an example of a closed antidemocratic procedure which will be normal when these harmonization procedures and committees and equivalency committees get into gear.

These procedures, Mr. Chairman, are going to come back to haunt the Congress. You are going to get States that are going to object. You are going to get interest groups that are going to object, saying that there is an impermissible loss of sovereignty that characterizes these trade agreements. It is possible to have global trade with global democratic procedures, and what this agreement does is give us global trade without democratic procedures.

I might add that in coming back to haunt Congress repeatedly, there will be no ideological bent to this. You will be protested vigorously by conservative, middle-of-the-road liberal groups and interest groups from business, labor, and citizens groups.

I think it is good to reflect a little bit, when the phones are off and the lights are off, to reflect a little bit on how this is going to boomerang back because the right protocols were not established and the right proposals for moratoria and other suggestions on health and safety standards were not proposed by the U.S. Trade Representative. I will tell you that Mr. Kantor harbors doubts, some public, more private, about the inadequacy of this trade agreement dealing with environmental concerns. I might add, he should harbor doubts about this trade agreement's impact on labor concerns and consumer concerns as well.

In conclusion, this agreement can be characterized as a pulldown on standards agreement, not a pullup, when it comes to health, safety, and democratic procedures. Because our health and safety standards, food, autos, environment, the workplace, are often higher than other countries in the world, other countries will be sorely tempted, after retaining some K Street law firms who ally themselves with certain interests in this country, such as pesticide interests who would like nothing better than a foreign country to challenge our pesticide standards in foods, to challenge these standards of ours in our country and also to chill attempts to improve these standards for consumers, environment, and workers over time.

It is quite interesting that the institutional bias, Mr. Chairman, in this document is such that countries do not violate GATT by having too weak standards, with the exception of slavery. But countries can be charged with violating them by having higher standards than other countries, and then deemed by closed secretive tribunals to be nontariff trade barriers in violation of this GATT.

I would like to make one more conclusion, and that is that it is important, whatever you feel about this agreement, and I know that you are very much in favor of this, Mr. Chairman, as many members of the House Ways and Means Committee are, that you contribute affirmatively to broadening the public discourse on this through a GAO plain english explanation, by having hearings around the country, by getting the departments and agencies to inform the American people what laws, what regulations, and what standards are in jeopardy from what is clearly implied in this agreement to be slated for nontariff trade barrier challenges or for conformity in accordance with the provision that I just quoted by the GATT.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF RALPH NADER

I would like to thank the chairman and the Ways and Means Trade subcommittee for inviting me to testify on the agreement that has come out of the Uruguay Round of negotiations under the auspices of the General Agreement on Tariffs and Trade.

As the world prepares to enter the twenty-first century, the proposed GATT system of international governance would lead nations in the wrong direction¹. The agreement reached December 15, 1993 in the Uruguay Round negotiations would expand the nature of the world trade rules, unfortunately in an autocratic and backwards-looking manner.

A major result of this transformation would be to undermine citizen control and chill the ability of domestic democratic bodies to make decisions on a vast array of domestic policies from food safety to communications and foreign investment policies. Decision-making power now in the hands of citizens and their elected representatives, including the congress, would be seriously constrained by a bureaucracy and dispute resolution body located in Geneva, Switzerland that would operate in secret and without the guarantees of due process and citizen participation found in domestic legislative bodies and courts. As well as undermining democratic decision-making, the new GATT means an increase in the primacy of the global trade rules over all other policy goals and relative to domestic laws on the federal, state and local levels. This Congress must evaluate the new GATT as a political and legal document, not just as an economic document.

The Uruguay Round agreement would:

o Establish a new global commerce agency, the World Trade Organization (WTO), with increased power, closed procedures and outdated substantive "trade uber alles" rules. While USTR Mickey Kantor testified to this committee that the WTO would not be much different than the existing GATT Secretariat, in fact analysis of the WTO text argues otherwise. The WTO would transform what has been a trade contract between countries (GATT) into a new international organization (WTO) with a "legal personality," similar to that of the United Nations. Establishment of the WTO would raise the relative importance and strength of the global trade rules as against non-trade consumer, workers and environmental values by giving them a permanent international organizational structure with an ongoing infrastructure and powers that GATT didn't have, such as self executing dispute resolution and trade sanctions. Under an extremely worrisome provision, Article 16-4 of the WTO text:

"Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."²

¹ Moreover, the Uruguay Round deal is a sizeable step backwards from the North American Free Trade Agreement (NAFTA) in failing even to recognize the unavoidable entanglement of environmental, health and labor rights policies with trade policy. While I have argued that NAFTA did not deal with the environmental and labor issues in a meaningful manner, they rose to the center of the public and congressional debate. For instance, as noted in the Wall Street Journal the day after the NAFTA vote: "The NAFTA battle clearly leaves a powerful legacy: It gave respectability to the notion that something is fundamentally unfair about trading with poor nations whose labor costs undercut those in the United States....Moreover, the brawl over NAFTA has spawned a permanent trade opposition..." (Wall Street Journal, November 18, 1993).

² Agreement Establishing the World Trade Organization, Article XVI - 4.

This obligation is much more stringent and inflexible than similar provisions in other trade agreements, including the 1991 "Dunkel" draft text of the Uruguay Round which required countries only to "endeavor to take steps as are necessary." Not only would establishment of the WTO add yet another layer of bureaucracy in a vast array of policy areas, but that bureaucracy would be a truly publicly unaccountable yet highly powerful one.

o Congressional approval of U.S. membership in the WTO would greatly expand the reach of global trade rules to impose new restraints on many nontariff policies that traditionally have been controlled domestically. The Uruguay Round negotiations expanded trade disciplines into new areas such as agriculture, services such as telecommunications and transportation, and intellectual property. The Uruguay Round would also put in place more pervasive restrictions in areas such as food standards and "technical standards" such as environmental or safety standards. The expansiveness of the Uruguay Round negotiations means that almost any domestic laws that impacts international trade could be considered a "nontariff barrier." Only laws that are more protective of the environment or consumer or worker health and safety are exposed to challenge; extremely weak laws cannot be challenged as providing an unfair subsidy for procedures who fail to meet even minimal international standards in these areas. Thus the GATT rules place a ceiling on health, safety and environmental protection, but provide no minimal floor to which all nations must rise. Under the WTO, domestic laws must comport with the WTO's substantive trade rules, or such laws can be challenged by other countries through dispute resolution proceedings.

o The WTO's dispute resolution is significantly strengthened thus guaranteeing stricter enforcement of the global trade disciplines over every countries' domestic laws and policies. This feature of the Uruguay Round must be considered from the perspective of a defendant, not only as a plaintiff which is the perspective of USTR's Kantor's testimony to this committee last week. Approval of this GATT text would put into place substantive trade rules that conflict with many U.S. domestic environmental, consumer and other social policies and a strong mechanism to force the United States to comply with those rules. As you may have noticed in USTR Kantor's testimony, the Administration itself is not satisfied with the Uruguay Round's outcome on environmental issues. Whether or not Congress approves the United States joining the WTO, Congress and the Administration should insist on a moratorium on challenges to environmental and consumer laws under GATT disciplines until the agreement's terms are brought up to date with our current environmental and safety conditions and policies.

A shift of power towards the global trade rules has serious implications for the future of democratic decision-making and citizen control of national policy. One of the clearest lessons that emerges from a study of industrialized societies is that the centralization of commerce is democratically, environmentally, and socially unsound.

No one denies the necessity of international trade and commerce. However, societies need to shape their trade policies to suit their economic and social needs -- guaranteeing livelihoods for their inhabitants and their children, as well as safe and clean environments. For instance, policies encourage community-oriented production would result in smaller-scale operations that are more flexible and adaptable to environmentally sustainable production methods, and locally rooted firms are more susceptible to democratic controls -- they are less likely to threaten to migrate and they may perceive their interests as more overlapping with general community interests. Although the Uruguay Round text has seized the rhetoric of sustainability, in fact its terms would handicap the very domestic policy approaches that could promote more sustainable economic models.

The extent and importance of the change that U.S. membership in the WTO would cause here has not been part of the discussion to date of the Uruguay Round. Over the next several days, this committee will hear testimony about the Uruguay

Round agreement from the perspective of an array of different commercial interests, and from a panel of environmental and consumer group witnesses. These witnesses will have comments on the specific provisions of the agreement affecting their interests. However, it is the duty of this committee and the Congress to assess the broadest implications of this agreement on the continued viability of democratic institutions and their continued ability to regulate commerce to suit the needs of their constituents, the majority of the world's inhabitants.

In two, three or four decades, when historians look back on this period during which so much of the world's system of self-organization is being reconfigured, they will point to the U.S. Congressional debate and consideration of the Uruguay Round as a turning point in the post cold war era. Either they will focus on it as a moment in which the Congress resisted the destructive GATT and NAFTA programs designed by society's most powerful forces for their narrow benefit, or they will view it as the moment in which Congress ceded authority to safeguard the interests of this country and its inhabitants to large multinational corporations that would gain excessive power from the Uruguay Round which they were so deeply involved in shaping.

The WTO: A Corporate Bill of Powers

Operating under the deceptive banner of "free" trade, multinational corporations are working hard to expand their control over the international economy and to undo the most vital health, safety and environmental protections won by citizen movements across the globe, or at the least, to keep future advances at bay. Look at the behavior of U.S. corporations in the United States as compared with their plants in other countries, such as the Mexican Maquildora region. The difference can be attributed to what they can get away with. GATT gives them the lever to hold back or weaken central protections of people in the United States by a practical erosion of our domestic sovereignty through an external layer of regulatory bureaucracy that pulls standards, down, but not up.

Taken as a whole, the texts coming out of the Uruguay Round negotiations would strengthen and formalize a world economic government dominated by giant corporations, without a correlative democratic rule of law to hold this economic government accountable. It is bad enough to have the Fortune 200, along with European and Japanese corporations, ruling the Seven Seas of the marketplace, which affects workers, the environment and consumers. But it is a level of magnitude worse for this rule not to have democratic accountabilities to the people.

It is only recently that corporations developed the notion of using trade agreements to establish autocratic governance over many modestly democratic countries. The world community founded GATT after World War II as an institution to peacefully regulate world trade. At present, more than 100 nations who engage in over four-fifths of world trade belong to it. In its first 40 years of existence, GATT concerned itself primarily with tariffs and related matters; periodically, the GATT signatories would meet and negotiate lower taxes on imported goods.

In 1986, however, when the Uruguay Round began, objectives changed. Multinational corporations thrust an expanded set of concerns on GATT that went far beyond traditional trade matters. They demanded that they be free to invest anywhere in the world with no domestic conditions; that environmental and safety standards be "harmonized" (made the same everywhere) -- with the practical result that they be dragged down to a lower common denominator level; and that rules governing ownership of intellectual property (patents, copyrights and trademarks) be revised. They also asked that the agriculture and services (banking, insurance, shipping, etc.) be brought under GATT disciplines. As well, they pushed for greater institutional and political power behind the trade rules vis-a-vie each nation's government, an effort that came to fruition with the WTO proposal. In short, these companies sought to expand GATT's reach and elevate its importance as a means of

undermining the ability of local, state or national governments to establish standards for corporate accountability.

The megacorporations did not hope to win their victories in town halls, state offices, the U.S. Capitol or even at the United Nations. They are looking to circumvent the democratic process altogether, in a bold and brazen effort to achieve an incredibly far-reaching agenda through the Uruguay Round establishment of the World Trade Organization.

The Fortune 200's GATT agenda would make the air you breathe dirtier and the water you drink more polluted. It would cost jobs, depress wage levels and make workplaces less safe. It would destroy family farms and make the food you eat contaminated with bacteria and high levels of pesticides and preservatives.

And that's only the strategic planning for the industrialized countries. The large global companies have an even more ambitious set of strategic goals for the Third World. They hope to use GATT to capitalize on the vulnerability of Third World countries and exploit their generally low wage, safety and environmental, levels. At the same time, these corporations will be able to overcome locally-owned businesses and solidify their dominance over developing countries' economies. This is the nature of large economic firms when there are no countervailing rules of law usable by citizens in their various legitimate roles, such as voters, consumers and workers. Look at the record where there is minimal or no rules of law and democracy by contrast.

Kraft, General Motors, Merck, Phillip Morris, American Express, Cargill, Dupont, and their foreign allies have succeeded in turning trade negotiations into power plays against nations retaining a meaningful sovereign right to protect citizens from harm. Global commerce without commensurate global law may be the dream of corporate chief executive officers, but it would be a tragedy for the people of the world with its ratcheting downwards of worker, consumer and environmental standards. The U.S. Congress is one of the only potential barriers to this future of concentrated corporate power backed by 'pull down' trade rules.

Democracy Done In: Trade Agreement Procedures

Secrecy, obscurity and unaccountability: these are the watchwords of the global trade negotiators. Every element of the negotiation, adoption and implementation of trade agreements is designed to foreclose citizen participation or even awareness.

The process by which a proposal is considered for adoption often yields insights into who stands to benefit from its enactment. Narrow, private interests inevitably prefer secrecy; in the halls of the U.S. Congress, for example, corporate lobbyists roam the corridors before a budget or tax package is to be voted on, hoping to insert a special tax exemption or subsidy and have it voted on before the public (or even many Congressional representatives) knows it exists. By contrast, citizen-based initiatives generally only succeed if they generate public debate and receive widespread public support.

One can be properly suspicious of the intent of the trade agreements by the process by which they are negotiated.

Negotiations over the Uruguay Round expansion of GATT have taken place behind closed doors in Geneva, Switzerland, between admittedly unelected and largely unaccountable government agents who are mainly representing omnipresent business interests. Despite a change in the political party occupying the White House, some of the same individuals occupy top policy positions at the U.S. trade office. Moreover, the policies advocated by the new Clinton Administration political appointees at USTR are largely indistinguishable from those of the Bush Administration predecessors. The provisions of trade agreements, if approved by

Congress, could undermine existing U.S. domestic law, not only in the direct regulation of commerce, but in areas ranging from food and auto safety to natural resource conservation.

In a virtual self-parody, on the order of the old television show "Get Smart," secrecy predominates even within the GATT negotiating process itself. Small cliques of powerful nations regularly retreat to "green rooms" to cut deals that will then be forced on other GATT signatory countries as "consensus" positions. The process would be hilarious were the consequences not so serious.

Corporate lobbyists, cruising the halls outside the negotiating rooms, have been able to exert tremendous influence over the negotiations. Citizen groups have not been able to play a parallel role; with few exceptions, citizen organizations do not have the resources nor the contacts to post lobbyists in Geneva.

As if the advantage in resources was not enough, the corporate lobbying function has in fact been institutionalized in the United States, in a set of official trade advisory committees to the U.S. trade negotiators. Appointed by the president, the advisory committees are composed of over 800 business executives and consultants, with token labor representation, five representatives of environmental groups who were supportive or neutral on Bush's trade policy, and no consumer, health or safety representatives.

On occasion, business groups are even willing to admit their influence over the process. The business coalition calling itself the Intellectual Property Committee (IPC) — its members include IBM, Du Pont, General Electric, Merck and Pfizer — has bragged that its "close association with the U.S. Trade Representative and [the Department of] Commerce has permitted the IPC to shape the U.S. proposals and negotiating positions during the course of the [GATT] negotiations." This sort of candor is atypical, however. The general rule is secrecy and mystification.

Proponents of the trade agreements are so wary of the consequences of public understanding that they believe it is not enough merely for the deals to be negotiated behind closed doors. Once the agreements are completed — or on the rare occasion when the negotiators deign to make drafts of the agreements public — any person who wanted to figure out what the agreements say would face a herculean task.

The first step is to obtain a copy of the agreement. This is not always possible. When then-President Bush announced in August that he had come to a final NAFTA agreement with Mexico and Canada, he gave an optimistic spin to the deal — but he did not make the text of the agreement available to the American people so they could judge for themselves. (Even the news media had to wait for a month before being able to obtain the NAFTA text.) Once NAFTA was made available, four months and a presidential inauguration later, by GPO in January 1993, the government imposed a new barrier to access: It charged citizens interested in receiving a copy of the two-volume, 1150-page document a \$41 price. Similarly, the December the GATT text was not available in the United States for nearly a month, leaving the Administration with a monopoly on describing the deal to the news media. Two leading Members of the House of Representatives told me that they did not have a copy of the text at year's end. Citizen trade advocates finally had to obtain a copy of the text — which was missing numerous pages due to copying errors — from another country, several weeks before it was officially available through the USTR's office. For citizens beyond the beltway who do not have access to the USTR's office, the text is still not available through the GPO.

Suppose a person obtains a copy of a trade agreement text. The next obstacle they face is decoding the agreement's meaning. The agreement is very complex. It is written in arcane, almost impenetrable technical jargon that bears only a passing resemblance to the English language. Only those with a passing knowledge of GATTese can comprehend what the trade jargon means for their jobs, food or

environment. GAO should be asked to prepare a plain language description of the Uruguay Round text as soon as possible.

This difficulty in obtaining and understanding the actual agreements is not an accident; it reflects an interest by government negotiators to obscure the terms and effect of the agreements from the public, the news media and even Congress. They would rather have citizens read a selective summary, press release or statement by the agreement's boosters.

Congress even has limited the effectiveness of its own meaningful role in the trade agreement negotiation process by deciding that it will consider the trade agreements according to a uniquely anti-democratic procedure -- no amendment fast track. Under fast track, Congress effectively forfeits many of its legislative rights and responsibilities, and ensures that the trade agreements will not be subject to the scrutiny that they deserve.

With citizens shut out of the process at every turn, it is no surprise that today's trade agreements pose such a peril to the democratic procedural gains of citizen movements in numerous countries in recent decades, to the potential to rein in multinational corporations and to both Third World and industrialized countries' ability to maintain control over their economies through some measure of feasible self-sufficiency. On procedural grounds alone, the authoritarian exclusion of citizen participation condemns the GATT and NAFTA operations. Are people to struggle for such rights as freedom of information, openness and access in their domestic countries only to lose these rights before closed international tribunal and committees dominated by corporate interests and their bureaucratic allies?

The Modern, Global "Race to the Bottom"

U.S. corporations long ago learned how to pit states against each other in "a race to the bottom" -- to provide the most permissive corporate charters, lowest wages, pollution standards, and taxes. Now, through their campaign for "free trade" particularly via the Uruguay Round, multinational corporations are directing their efforts to the international arena, where desperately poor countries are either pressured or willing to drive conditions downward and backward.

It's an old game: when fifty years ago the textile workers of Massachusetts demanded higher wages and safer worker conditions, the industry moves its factories to the Carolinas and Georgia. If California considers enacting environmental standards in order to make it safer for people to breathe, business threatens to shut down and move to another state.

The Uruguay Round is crafted to enable corporations to play this game at the global level, to pit country against country in a race to see who can set the lowest wage levels, the lowest environmental standards, the lowest consumer safety standards. It is a game that has its winners and losers determined before it even gets underway: workers, consumers and communities lose; big business wins. Notice this downwards bias -- nations do not violate the GATT rules by pursuing too weak consumer, labor and environmental standards. They are challenged only when these standards are considered too advanced.

We have already seen the results of "free" trade. California improves its workplace and pollution standards; the furniture industry migrates from Southern California to Mexico. Reeling from decades of underinvestment in quality and safety, U.S. automakers look to regain their "competitiveness" by moving their plants to Mexico, where the wages are far lower and pollution and safety standards are inferior. The GATT and NAFTA deals are designed to make it even easier for business to play this game.

Enactment of these trade agreements virtually ensures that any local, state or even national effort in the United States to demand that corporations pay their fair share of taxes, provide a decent standard of living to their employees or limit their pollution of the air, water and land will be met with the refrain, "You can't burden us like that. If you do, we won't be able to compete. We'll have to close down and move to a country that offers us a more hospitable business climate." This sort of ultimatum is extremely powerful – communities already devastated by plant closures and a declining manufacturing base are desperate not to lose further jobs, and they know all too well from experience that multinational corporations find it easy to exit the United States if they do not get their unfair way.

Want a preview of the new world trade order? Check out the U.S.-Mexico border region, where hundreds of U.S. companies have opened up shop during the last two decades in the special maquila trade zone. When U.S. factories have closed down and moved to Mexico, this is where they have gone. The lure is simple: a workforce that earns as little as four dollars a day and does not have the means to defend itself against employer aggression because it is effectively denied the right to organize, and is exposed to terrible environmental and workplace conditions.

In many instances, large corporations are already forcing U.S. workers and communities to compete against this Dickensian industrialization – but the situation will become much worse under the WTO, which will make it much easier and less risky for U.S. and other foreign companies to open harsh factories in impoverished developing countries. Further, under the GATT rules, a country may not exclude imports on the basis of labor or environmental conditions in the country of production (GATT does allow an exception to this rule for slave labor.) Although such "production process" standards affect the cost of production, countries with higher standards cannot provide a level playing field for local producers who follow domestic laws and incur the related costs. Thus, countries are denied the tools to ensure that domestic producers can successfully operate without having to relocate to jurisdictions with lower cost standards.

Worst of all, the corporate-induced race to the bottom is a game that no country or community can win. There is always some place in the world that is a little worse off, where the living conditions are a little bit more wretched. Look at the electronics industry, where dozens of assembly and other factories – in search of ever lower production costs – have migrated from California to Korea to Malaysia. Many of those businesses are now contemplating moving to China, where wages and workplace and environmental standards are still lower. The game of countries bidding against each other causes a downward spiral.

The most important tool countries have to combat serious corporate blackmail is to say, "You are not going to be able to sell in this country if you behave in that manner." Using this logic in past, the United States has conditioned trade status on labor and human rights for trading partners and on a ban on foreign corrupt practices for companies. Similarly, the United States currently has environmental and conservation laws that forbid sale in our market, for instance, of fish caught with driftnets or using techniques that kill dolphins, and of wild-caught birds. But the Uruguay Round expansion of GATT would place at risk the exercise of such national authority to control the domestic market. Under the terms of the WTO, that sort of effort to protect national standards would be considered a "non-tariff trade barrier," and would be proscribed.

Dirty milk, dangerous cars and dying dolphins

"Non-tariff trade barriers," in fact, has become a code phrase to undermine all sorts of citizen-protection standards and regulations. Corporate interests focus on a safety or health regulation that they don't like, develop a story about why it favors domestic companies over foreign corporations and then demand that the regulation

be revoked. Several examples illustrate how insidious the concept of non-tariff trade barriers can be.

In 1991, Puerto Rico, a U.S. territory (commonwealth,) upgraded the quality of its milk supply by instituting the Pasteurized Milk Ordinance, a tougher system of regulation than it previously had in place. Ultra-high temperature (UHT) milk from Canada, was unable to meet the island's new more rigorous standard. Puerto Rico subsequently banned the sale of Canadian UHT milk.

Canada then challenged Puerto Rico's standard as a non-tariff trade barrier under the existing U.S.-Canada free trade agreement. A panel of five trade bureaucrats — three from Canada, two from the United States — heard the case. (The ratio was decided by a coin toss.) Canada won the challenge, with the panel ruling that Puerto Rico must make an equivalence determination as required under the U.S.-Canada agreement to prove that the obviously different standard did not accomplish its policy goal. The Uruguay Round's food standards section also requires such equivalence determinations and requires the U.S. accept standards different from its own if such a determination shows the standards are "equivalent."

Such a decision about "equivalence" is how the U.S.-Canada Free Trade Agreement also was used to gut U.S. border meat inspection laws. U.S. and Canadian officials decided that the two countries' inspection systems were equivalent through an arbitrary and closed decision-making process. To avoid "unnecessary" trade effects, inspection of meat entering the United States from Canada was reduced to several carcasses from every fifteen trucks crossing the border. Canadian companies were notified in advance if their shipment would be the fifteenth and the truck drivers were designated to select the several carcasses to be inspected. Unscrupulous producers on both sides of the border could take advantage of the loophole in inspection to export the meat that would not pass domestic inspection. Luckily, a 25-year veteran USDA meat inspector in Montana, William Lehman blew the whistle on the vile and contaminated meat that was pouring over the border and onto the plates of American consumers. His repeated congressional testimony about the cancerous, feces- and blood-smeared meat coming through his inspection station ultimately led to a greater level of inspection restored.

Finally, there is the successful 1991 GATT challenge by Mexico of the U.S. Marine Mammal Protection Act. Despite a letter from 63 Senators and another from over 100 Representatives calling for the "tuna-dolphin problem" to be solved as part of the Uruguay Round, the existing flaws in the GATT article were not fixed. In fact several principles from the panel decision were incorporated into the new Uruguay Round chapters on standards. Congress has been kept off the hot seat in the tuna-dolphin case because the United States exercised a procedural "emergency brake" available in the existing GATT to stop full implementation of such panel decision. That emergency brake is eliminated in the Uruguay Round dispute resolution procedures. Thus, if the tuna-dolphin case arises under the new Uruguay Round rules or when the next successful challenge of a popular U.S. environmental and health law occurs, the Congress will be forced to repeal the law and face constituent wrath, or the United States would be required to pay perpetual trade sanctions to maintain it.

Most Americans probably find this possibility unbelievable; after all, they would suppose, the United States can surely impose whatever standards it wants on products made or consumed in this country. But in approving the U.S.-Canada Free Trade Agreement and the NAFTA, the United States surrendered its control over such laws. The U.S. Congress would do so on a much larger and more significant scale if it decides to approve U.S. membership in the WTO.

Consider what would have happened to auto safety if these trade agreements were in operation. To push for airbags in cars, auto safety advocates had to convince the federal government to mandate the equivalent of airbag protection in cars.

If the trade agreements had been in place at the time, the auto companies and their political allies in Washington would have said, "Oh no. You can't have airbags because the international standard just provides for three-point seatbelts. If we require all cars produced or imported in the United States to have airbags, that is really a disguised way to keep foreign cars from coming into the United States. That's a non-tariff trade barrier and therefore a violation of the trade agreement."

The Puerto Rican milk and airbag examples are only the tip of the iceberg. Already, a Danish recycling program, the U.S. asbestos ban, a Canadian reforestation program, U.S., Indonesian and other countries' restrictions on exports of unprocessed logs, a Canadian anti-air pollution program and U.S. laws designed to protect dolphins have been attacked as non-tariff trade barriers under free trade agreements. The most recent version of the European Community's list of alleged U.S. non-tariff trade barriers includes the Consumer Nutrition and Education labeling act, state recycling laws and fuel efficiency regulations for motor vehicles. This list can be taken as foreshadowing planned trade challenges under the much more domestically intrusive WTO. The E.C. did indeed file a formal GATT challenge of the U.S. gas guzzler tax and fuel efficiency penalties several months after publication of its list. The case was briefed and argued in front of a closed GATT dispute tribunal in the fall of 1993 and a decision is pending.

U.S. citizen groups already have enough problems dealing in Washington with corporate lobbyists and politicians without being told that decisions affecting their status will be made in other countries, by other officials, by other lobbies that have no accountability or disclosure requirements in this country. The problem is exactly the same for citizen organizations in other nations, already struggling against the entrenched monied interests (including foreign subsidiaries) in their own countries.

To compound the autocracy, disputes about non-tariff trade barriers are decided by secretive panels of foreign trade bureaucrats. Only national government representatives are allowed to participate in the trade panels' tribunals; citizen organizations are locked out. Imagine if, under the new GATT, Japan had challenged the mandatory air bag rule in 1991, immediately after Congress adopted it. The Bush administration, which, in keeping with the Reagan administration, had long opposed the air bag requirement, would be its only theoretical defender -- the auto safety advocates and their constituencies would be locked out.

An important and unusual factor about approval of trade agreement for Congress to keep in mind in considering the Uruguay Round is that unlike regular legislation, trade agreements cannot be easily amended. Thus, whether you are a Democrat or Republican, you must be certain that the trade agreement's rules will be appropriate regardless of which party is in the White House. Thus, the dispute resolution system set up under the WTO must be considered for its effect favoring the Executive Branch's relative authority vis-a-vis the congressional prerogative in legislating. Not only would the Executive branch have a new reason to fight congressional initiatives (e.g.: sorry, you can't do that under the WTO,) but also the Executive Branch would be the sole "defender" in the WTO of legislation it opposed.

It is hard enough when people in local communities have to defer to the state government, or when the state government has to defer to the federal government. But it is quite another order of democratic surrender to defer to trade agreement bureaucracies, where the decisions are made by unelected, secretive members of tribunals in Geneva, Rome or elsewhere.

The Uruguay Round: Headed in the Wrong Direction

One of the clearest lessons that emerges from a study of industrialized societies is that the heavy concentration of commercial power is environmentally, socially and democratically unsound.

Allocating power to lower level governmental bodies tends to increase citizen power. Concentrating power in closed, publicly unaccountable international organizations, such as the autocratic trade pacts do, tends to remove critical decisions from citizen influence – it is a lot easier to get a hold of your local elected representatives than international trade bureaucrats.

All over the country there is a bubbling up of citizen activity dealing with the environment and public health. People want solar energy instead of fossil fuels; they want recycling; they want to clean up toxic waste dumps; they want safer, biodegradable, environmentally benign materials instead of others that happen to be sold in greater numbers worldwide. And if local or state governments can make decisions to help achieve these goals, then people can really make a difference. But if existing or proposed local and state standards can be chilled by a foreign country's formal accusation (in collaboration with domestic special interests) that the standards are a non-tariff trade barrier, or by a company's claim that the burden the standard would impose is so great that they would have to pick up their stakes and move elsewhere, then the evolution of health and safety standards here and around the world will be stalled. Regulatory breakthroughs do not only occur at the national. Often, a smaller jurisdiction – a town, city or state – experiments with a standard, other cities and states copy it and, eventually, national governments and international governments, lagging behind, follow their lead.

This percolating-up process for advancing crucial non-commercial values that shape living standards will be stifled by the WTO, with bottom-up democratic impulses replaced by pull-down mercantile dictates.

It is inevitable that different policy goals will at times conflict, for instance goals of maximizing trade and goals of public health and environmental protection. However, the decision about which policy goal should take precedence in a particular instance should be decided by those who will live with the results. Under the Uruguay Round, those decisions are largely shifted away from citizen control and domestic democratic institution to a dispute resolution body located in Geneva, Switzerland which operates in secret and without the guarantees of due process and citizen participation found in domestic legislatures and courts.

Moreover, the substantive trade rules interpreted by the dispute resolution body of the WTO would place trade expansion over other policy goals in almost every instance. This grave institutional bias, which subordinates health, safety and other factors to the imperatives of commercial trade is the not the way that Congress has legislated over the decades. I strongly urge Congress to reject the Uruguay Round agreement in order to revisit its trade proposals within a democratic structure that protects our domestic federal and state sovereignty, and, to apply President Clinton's words, that "promotes democracy abroad." For it is democracy, not autocracy, that is the strongest and fairest engine for sustainable economic development. Thank you.

Chairman GIBBONS. Thank you, Mr. Nader.

As I said in the beginning, I read your testimony thoroughly yesterday before I went home. I have to say that in reading your testimony, there is a lot of food for thought in it.

I don't take exactly the same view you do about the whole agreement, though. I see this as part of an evolutionary coming together of sovereign governments on an international scale to try to bring better order out of the events that control our lives.

Just as American democracy didn't spring full blown even at the time of the adoption of the Constitution—it required considerable amendments since that time, and it built upon over 3,000 years of torturous history to get where it did—I think the GATT or World Trade Organization proposal we have here is only in its infancy and its beginning.

I think as we go on, there will be much more democratization to it, there will be much more about human rights and labor rights and rights of individuals as far as sanitary and health things are concerned. I think that as we grow, it will pick up those attributes. It may take a long time to do that, but I think it is part of the march of human endeavor that seems to have characterized this race.

Anybody that reviews civilization's history knows that it has been rather bloody and rather confrontational and not always moral or correct, but generally speaking, we have plowed ahead and improved it. And I think that is what we are seeing here before us, another document created by people, most of whom, I think, are well intended, that falls far short of the ideal.

You have outlined a very important agenda for what I think the future ought to take up and be concerned about. The administration tells me that on the secrecy matter, they fought and tried to prevail in that matter and were outvoted, but that they intend to make all of their participation, their documents and their arguments, public records under the spirit of freedom and openness that we practice here in this country. They are not going to file any secret proceedings or anything like that, and they are going to try to encourage other countries, first of all, to come ahead voluntarily to do that.

I think as this whole thrust toward freedom in our world keeps growing, sometimes at a fitful rate but it keeps growing over the long period, that we are going to find that that is done.

Mr. NADER. I appreciate your comments, Mr. Chairman, but what troubles me is we are starting off on a backward foot. That is, we are starting off agreeing to international procedures that are, first, excessively secretive, nonparticipatory, and that excessively interfere in nontrade matters, such as health and safety, while subordinating them in the process.

Traditional trade agreements have dealt with tariffs, quotas, et cetera. They are now moving into domestic policy issues. You know the trouble we had with airbags. Just imagine the trouble we would have had with airbags if this thing was operating 20 years ago.

That is my concern, that it doesn't start out with an open door for evolution, as you quite well put it. It starts out in a closed matter. We would never have amended the Freedom of Information Act

in this country unless we could prove to you before 1974 in Congress through judicial decisions that it needed amendment. We cannot do that with these kinds of closed proceedings that this agreement largely requires.

Chairman GIBBONS. I have faith that you and others similarly motivated will find ways around that and will begin to drag these things out. I know it is going to be painful. I hope you live long enough to get it done.

Mr. NADER. I hope you will be our ally.

Chairman GIBBONS. I will try to stick around with you on that.

When I look back at where the world stood on December 14, 1993, and where I think the world stands, not the United States but the world stands, now in February 1994, we have made tremendous progress on the world front.

We had a rather loose agreement on manufactured goods on December 14. We now have a loose and perhaps somewhat defective agreement on practically all of commerce and some other things included. It is not all that I want, it is certainly not all that you want, but I think in that long evolutionary human process, Mr. Nader, that we are making some progress.

Mr. NADER. You see, all that progress could have been obtained, Mr. Chairman, without having to pay the price of antidemocratic procedures. Doesn't that astonish you that these countries insisted that in return for opening up trade and investment, we have to agree to practices and traditions that we would not tolerate in our country at the Federal and State and local level as the price?

Chairman GIBBONS. You are comparing the United States, which is perhaps the most democratic, the most open of all societies, against the practices and the history and the constitutions of 115 or 116 other countries that have nowhere nearly obtained the standard of political accountability that we have.

Like you, I revere our system of political accountability, our openness. It could be better, but it still is a high, high standard for the rest of the world. I see us as trying to pull up the rest of the world and not as retreating to something.

As I say, our officials have advised us that they intend where these sessions are closed to make available to everyone all of their briefs, all of their arguments, all of the outcomes of them, and to continue pushing others that participate to make those kinds of things available. I think that openness will come in that and the accountability will come. It may not come immediately, but it is going to come evolutionary, because I think that is just one of the things that is built into human beings.

We want to know what is going on. We don't trust people who must conduct all their business behind closed doors. We are rightly suspicious of it, and I think as that settles down on the rest of the world, that will come about.

Even the British and the Canadians don't have the blessings of the first amendment that we have. They have official secrecy acts and all those kind of things. And those are our two closest democracies that have the freedoms that we so widely admire and cherish in this society.

Mr. NADER. In regard of your words just now, we are going to be proposing a broad-based democratic protocol to all foreign trade

agreements, so that the U.S. negotiators, if Congress approves, will have a mandate to pull up these countries at least to the level of normal due process. That will not affect world trade. It will actually facilitate fairer world trade.

I think it is important to make the distinction between the economic aspects of this program and the democracy and the procedural rights that Congress should consider for all present and future trade agreements.

I know people are going to say, if this is passed, Mr. Chairman, they are going to start saying in the context of the controversies that arise, it is hard enough dealing with Tallahassee. It is hard enough dealing with Washington. Now we have to deal with Geneva and the State Department.

Chairman GIBBONS. I came to the conclusion 50 years ago, as I guess I began my political career—that may be stretching it a little—that there were many things that were political that we couldn't get accomplished, but there were more things in the pocketbook area that we could get accomplished, and perhaps the pocketbook could begin to lead us in some of the political areas that we just were unable to get the agreements done.

I believe in free and open and competitive trade because I don't think that there is any other system that man is smart enough to put together and to manage. I believe the marketplace, with the appropriate constraints on it by government to make sure that it is a real marketplace, is the best way to run a system that is as complex as this one we exist in.

I think through marketplace ideas and through marketplace practices, we can lead ourselves into better political practices. Overall, that is what I am about.

Mr. NADER. I hope you will be receptive to our comprehensive proposal, which we will submit to you in a few weeks.

Chairman GIBBONS. I will read it. I won't guarantee you what I will do about it, but I will read it and try to understand it.

Mr. NADER. What you are saying is global trade leads to global democratic law?

Chairman GIBBONS. I hope so. They go hand in hand, and I am not sure that one precedes the other, but it is my perception that we can agree to things that are economic and business in nature that we can't really agree to because of the baggage we carry in political areas. Our prejudices, our biases, our ignorance, everything else that we carry as individuals is a terrible baggage to carry into any negotiation trying to improve human conditions, but people do understand making a living and do understand buying and selling goods and they seem to be able to accomplish more in that area, so I kind of use that to lead the way.

Mr. NADER. It is going to be the unique responsibility of Congress, because I don't know many corporations who were so heavily involved in drafting this agreement and hovering around Geneva during the negotiations who are very interested in the democratic procedure aspect which we have been discussing.

We go back to Thomas Jefferson again. It is the unique responsibility of the representatives to curb the excesses of the monied interests here. I still would like to see the first major global corpora-

tion come forward with the sensitivity to the democracy aspects of these trade agreements.

Chairman GIBBONS. Ralph, maybe we have trapped them. Maybe they are going to have to repair to that once they get performing under what we are creating here.

Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman, and welcome to Ralph Nader.

I was mentioning to the Chairman earlier, and I am sure you recall, we debated down at Gainesville and we were on that platform and suddenly they made the presentation of the announcement of Martin Luther King's assassination. A woman in the front row passed out, I remember that vividly. I don't remember what we debated about, but I sure remember that part.

You strike a responsive chord with me as a conservative Republican by invoking Jefferson's name and, in fact, in some very conservative arguments. One of the points that you made is that standards originating in, say, cities and local communities and others observe that they work and they escalate up. Sad to say, I think this town operates under a contrary national health care proposal mode, that we know what is best and we will impose it on the rest.

I think that is really what you are kind of addressing here at the international level. I confess that is more than a little disconcerting.

We do have precedents, though, for some of these secret negotiations, as witness the Federal Reserve Board. I have had legislation in with Henry Gonzalez cosponsoring it with me when I was on the Banking Committee, going back 24 years ago, to try and get audits of the Fed. We have never been able to get that proposal off the ground.

I am sensitive to the concerns you express. I do, however, share much of the conviction, I think, of our Chairman that economic growth, in my estimation, is better calculated to produce economic reform than to try and impose democratic reforms from the top down and anticipate that you are going to have beneficial results.

China, to me, is an example. When Deng Xiaopeng embraces Leninist capitalism and they have that explosive economic growth going on over there, I think that is more apt to produce, over time, reforms in their political system than, say, the former Soviet empire, where they attempt to impose democracy from the top down. If you are starving and freezing to death, who gives a damn whether you have the boat?

To be sure, it is a bit of a gamble, but Congress can also, at some point down the line opt out, too, if necessary. My own predilection is while this is far from perfect, and I share some of the concerns you have registered here, my own inclination, along with the Chairman, is to embrace it.

Mr. NADER. The problem is that we allowed ourselves to be pulled down when we are the most powerful economy in the world, and we didn't really make an attempt in the negotiating sessions to highlight the democracy procedures for the dispute resolution tribunals, harmonization committees, and equivalency determinations. We didn't even try.

That is why I was so disappointed, that we didn't lead with a strong democracy hand, saying, look, this is going to expand global trade in the best sense. It is not going to detract from it. We shouldn't have a zero sum game operating here, that in order to get more world trade we have to give up democratic procedures or States' rights or local municipality rights, or, I might add, Congressional authority.

This is, I think, a serious erosion of Congressional authority that ought to be considered during the debate as well. You don't like to be confronted with ultimatums. This is an ultimatum, a breeder reactor. It certainly imbalances the congressional branch versus the executive branch. The executive branch becomes the representative of the WTO and it imbalances it, I think, egregiously.

I don't agree with Joe Califano's article in the New York Times Magazine about the Congress having too much power over the executive. I think the problem is the reverse. I think the problem with fast track is that it discourages Members of Congress individually from burrowing in this and looking at it in great detail, because what is the use? There are no amendments and it is fast track.

So it discourages the kind of detailed treatment that Congress has given large tax laws, large ERISA laws, large laws that are five times this size. I think the fast track is the first indication of the erosion of Congressional authority and independent evaluation.

Mr. CRANE. You mention that and I am thinking of the Smoot-Hawley text that came out of committee and what Congress finally did to it. I am not sure I have unreserved confidence in turning that Congress loose on a lot of things like that.

Mr. NADER. Except that this is far more than tariffs.

Mr. CRANE. Oh yes.

Mr. NADER. That is, you can make a distinction between the tariff, quota, investment aspects and the health and safety aspects that are subordinated under antidemocratic procedures by GATT. Do you see what I mean? In other words, traditionally, these trade agreements never interfered so deeply into domestic standards, and ours are most vulnerable because we are the highest. Ours are the ones that are most vulnerable to be pulled down.

We have these examples, and testimony coming up this afternoon will give you more examples that this is not a hypothetical situation. I know you have heard, over your years in Congress, hundreds of people come up here and give you the horrible hypotheticals that never materialize. These are going to materialize. They have already started.

When Mercedes-Benz, one of the richest and technically advanced auto companies, is now taking on our gas guzzler and fuel efficiency standards, one might add, a little late in the game, if they bring this under the WTO, they are going to have much more power. If Canada brings its asbestos challenge under the WTO, that is going to have much more power than old GATT.

All I am pleading with you is to look at your own traditions, your own practices the way you legislate, your own respect for State and local rights, and have a vigorous public debate on it around the country.

Mr. SHAW. Would the gentleman yield on this?

Mr. CRANE. Yes.

Mr. SHAW. Something just keeps coming back to my mind, as you start talking about open. Much over the protest of many of the members of this committee, when the Ways and Means Committee goes to marking up a tax bill, they go into executive session. I am not defending that. I think it is outrageous. But our skirts aren't completely clean in this area, either.

Mr. NADER. At least you have hearings, unlike the WTO's hearings, that are open.

Mr. SHAW. We have hearings, and even on the GATT situation, the trade representatives do meet with this committee and are responsive to input from Members of Congress during the entire process, so it is not that the Congress is being completely shut out of the process.

Mr. NADER. Except during the GATT. I have talked to so many Members of Congress who just candidly said they didn't know what in the world was in this thing. They saw a free trade label or they saw some interest groups against it and they took the position. It was embarrassing to try to discuss this with some of them.

One of your major experts in agriculture never knew about the equivalency determination between Canadian and U.S. meat inspection, someone I have worked with for years as a defender of safe meat inspection processes. One day before the vote, sitting in his office, he said he had never heard of it.

So I am just counseling, if I may, a more deliberate process, because it will come back to haunt you constitutionally, federally, and substantively and procedurally in all these areas, the difference between the branches, the State and local, as well as the substantive issues of consumer, environmental, and workplace.

Mr. CRANE. Ralph, let me thank you for your testimony. I will look forward, in fact, during the remainder of this hearing to get further input. But I appreciate it, and it is nice to see you again.

Mr. NADER. Thank you very much, Congressman.

Chairman GIBBONS. Mr. Thomas is next. Go ahead, Bill.

Mr. THOMAS. Thank you, Mr. Chairman.

Ralph, thank you again. I don't want to repeat what has already been said, because what you clearly have here is a slightly different view of the world. When people view the world differently and admit it, then we can go on to work on those things that we agree on. If we sit here and try to convince each other that our view of the world is the correct one and the other person's is not, you tend not to get anywhere, and that is, in part, the problem.

What I see across administrations is that the U.S. Trade Representative is basically performing the same functions and operating in the same way. I tend to believe that they have a realistic view of the world and that they are doing it right. I don't see it as a plot thesis. Somebody sees it then as a plot thesis, regardless of the administration, certain things are trying to be put over on people. That is simply looking at the world from a different perspective.

I agree, you look at the world differently than I do. My problem is that there have been some very positive democratic things done in undemocratic ways. Fortunately, no one on this panel has mentioned yet what I think is the classic example. It is the case study

in an undemocratic procedure, failure to communicate with representatives, failure to do what they had been sent to the city to do, but produced a document which, thank goodness, has allowed us to have this very democratic system that you extol and hold up. That is called the Constitutional Convention.

It was illegal. It was in violation of every requirement that the State legislatures placed on the delegates at the Constitutional Convention. They knew it. They went underground. They agreed not to be honest about what they were doing, and they produced the Constitution of the United States. They didn't produce the Bill of Rights.

Mr. NADER. That is a fascinating analogy. Aside from historical accidents always happening in the proper way, there are two differences. In that sweaty room in the summer in Philadelphia where there are, I believe, 70 men working to produce the Constitution, there were no corporations inside that room. There were no corporations hovering around that room. There was nobody hovering around that room.

No. 2, when the Constitution was ratified, it wasn't ratified under fast track by all the States. [Laughter.]

Mr. NADER. And No. 3, there was a common enemy that you don't have here. The common enemy was the disintegration of the Union, as well as the lurking British King, which tends to bring the best out in people under these kinds of rigors.

As you mentioned, it didn't ban slavery and it didn't require equal rights. I mean, there were infirmities, but it gave itself the right to be amended. This is very hard to amend, Congressman. This is very hard to revise.

Mr. THOMAS. I understand that. Let us take your view of the world and the description of the Constitutional Convention that you just gave me.

There were no corporations lurking in the room. That is a legal concept that hadn't yet been developed at that time, but clearly, starting with Charles Beard, even though he had an imperfect monograph on the question of the economic interpretation of the Constitution, there is no question that given the elective process, the people in the room were the elite. They were the captains of industry, if there had been industry as we know it today. They were the corporate boards, if they had corporate boards. They ran the country. The process of selecting them made sure they were the people who had the economic interests.

So rather than having them lurking in the halls, the document they produced was produced by the people who they themselves were the people who are now lurking in the halls. That, to me, is progress. It may not be the kind of progress that you are looking for, but even people who are the heart of the economic structure somehow, sometimes, as you say, accidentally, do good.

Second, the ratification process. The ratification process on the books legally was a veto by any State. It had to be unanimous. They themselves proposed that it not be unanimous. That in itself was revolutionary, and they then went ahead and used the revolutionary nonlegal structure to confirm it.

Mr. NADER. Bring them back. [Laughter.]

Mr. THOMAS. They probably wouldn't be able to do it, given the way you would attack them in terms of the secrecy of what they were doing, Mr. Nader. If you were in Philadelphia in 1789, they probably wouldn't have accomplished their job.

Mr. NADER. If Jefferson replaces Clinton and Madison replaces Kantor, I will withdraw my objection.

Mr. THOMAS. Excuse me, Thomas Jefferson was not at the Constitutional Convention. Thomas Jefferson wasn't there.

Mr. NADER. We are talking about the Founders.

Mr. THOMAS. Thomas Jefferson wasn't at the Constitutional Convention.

Mr. NADER. All right.

Mr. THOMAS. Let me explain to you the people who were in the room. He was off doing the government's work in Paris as the representative of the United States. It was the economic interests selected by the State legislatures that were in the room doing the work. Patrick Henry wasn't there. The patriots weren't there. The lawyers, the doctors, the farmers, and the owners of industry were in the room.

Mr. NADER. Not entirely, and they were coming off a Revolution where they feared the people.

Mr. THOMAS. They were not coming off a Revolution. Let us get into history. It was almost a generation between fighting the Revolution in 1776-83 and producing a 1789-92 document in terms of the people that were in the room, and it was an economic document that they produced. You can go on and on with the analogy, and when you say they had a common enemy, fear of disintegration, yes, they wanted to form a more perfect union, primarily in an economic way, because they had different money between the States, they had different economics, and, in fact, tariff and nontariff barriers. What they tried to do was create a common market.

Yes, they had common cultural baggage which allowed them to create the common market we know as the United States, and the world doesn't have that common baggage, as you so eloquently indicated, by the failure of many countries not to be as democratic as we are.

But we are going ahead in the human condition and improving our lot. Just as the Founding Fathers, as you so correctly pointed out, were facing disintegration, we were facing disruption in economic trading patterns of the world. And just because we couldn't deliver 98 percent of what you want, my job is 52, 56, 60 percent. I think this may be closer to 54-56. The vote is not, gee, I wish it was this, gee, I wish it were that. It is, do we accept it or do we not.

I can go into a lot of other particulars, as you have outlined them. I agree with you. After I agree with you that it was nondemocratic after antidemocratic—I would prefer that structure—after you do that, what do you do, walk away? The answer is no.

You are going to propose a democratic procedure which we are supposed to impose on the rest of these folks. What happens if you bring it up? Do you want it to be put to a vote, or do you want us to impose it on the other nations? If we use the democratic structure and we put it to a vote and it is voted down, is that de-

mocracy? Do we then let the majority determine what we do, even though what we advocated was a democratic position?

Let me close by telling you, Mr. Nader, as a Republican I will tell you I believe that I am being stepped on on my daily rights on a daily basis around here. [Laughter.]

Mr. THOMAS. I frankly think the minority has a moral and qualitative advantage over the Democrats, who are the majority. But in a democracy, it is quantitative, not qualitative. Virtually every one of the complaints that you have made is a qualitative one based upon the way you view the world. I might agree with you in a number of the ways in which you view the world, but the final decision in a democracy ultimately is made on a quantitative basis. We tried behind closed doors to force on those people democratic structures and we lost quantitatively, which is the sine qua non of democracy.

Mr. NADER. Let me answer your challenging excursus here. I won't accept your comparison with the Constitutional Convention, which, of course, enabled enormously the kind of participation evolution. It didn't start with autocracy. The document didn't start with autocracy. This is autocracy. It started with an independent judiciary, it started with a deliberative legislature, it started with the Federal and State sovereignty system, et cetera, and then later with the Bill of Rights.

What I would like to point out is the reason why the Bush and Clinton people came out the same way. One is that most of the people who were with Bush on the USTR, et cetera, stayed on.

The second reason is that Mr. Clinton forgot the principles in his October in North Carolina speech in 1992, when he outlined the changes he would like to make in the NAFTA and, correlatively, in other international trade agreements, and then abandoned them in the negotiating process. One of those changes was democratizing the procedures.

The third is your point of viewing the world differently. We are not talking about the substantive issues of world trade in this exchange. We are talking about procedures. If you think that you view the world differently in terms of democratic procedures, I have to classify you more as an autocrat, because these procedures are available to everybody, not just liberals, not just conservatives, not just corporations, not just citizen groups. They are universal.

You do not start an international form of governance on the wrong foot, the way this GATT starts, on the wrong foot in terms of closed processes, nonparticipation, et cetera. How do you get a leg in to open it up?

I might add, moving toward an economic union between our democracy and dictatorial regimes abroad is quite different than trading with China and conditioning it on human rights changes. That is not the analogy. The analogy is moving toward an economic union with Mexico, which entrenches the dictatorial regime and which makes it very difficult for a pulldown trade agreement to do anything than adversely affect our living conditions in this country.

You are beginning to talk the ultimatum line. What do I propose to do at this date? Let me tell you what I propose be done, that there be before the April 15 date a moratorium on health and safety, on national challenges to our health and safety standards. Slice

them away under a moratorium. Work the implementing agreements to try to insinuate more democratic procedures. Then proceed with an omnibus democratic procedure process for all present and future trade agreements to get other countries to agree to. That way, we pull them up.

Our historic mission is not to compromise on democracy, it is to pull them up. When we submerge our health safety and workplace standards and our sovereignties to an international system of governance, we have to be even more adamant, being the largest economy in the world and the most powerful nation, to promote democracy abroad through these trade agreements by pulling up the Mexico and the India and the China and the Europeans in areas of openness, accountability, review, and participation.

Wasn't it President Clinton who just said in his State of the Union message, we should promote democracy abroad? Well, we shouldn't allow trade agreements to degrade democracy here at home.

Mr. THOMAS. Thank you very much. I will only respond by saying that it was that common cultural baggage, both in terms of social and political structures, that allowed the United States in 1783 to form what was, in essence, a common market. Two hundred years ago we formed that common market, that continental, eventually, trading agreement which we are working toward. The fact of the matter is, countries of the world don't share the common baggage. Take a look at Europe itself. They haven't been able to bring it about.

I agree with you that the timeline we are operating on seems far too long, certainly longer than our lifetime, but if you are telling me that the world is less democratic today, if you are telling me that the trading relationships between countries have set us back in terms of opening up the individual's ability, ultimately, democracy to me is allowing the individual to flourish above the societal structure, then I simply have to fundamentally disagree with you with my eyes and my ears and my brain. The world is more democratic than it was in the past.

Mr. NADER. But it had nothing—

Mr. THOMAS. It is not as democratic as you want.

Mr. NADER. It had nothing to do with the trade agreement. I am worried about the degrading of democracy here in the United States. That is the first priority for me.

Mr. THOMAS. I understand that.

Mr. NADER. If we degrade, the rest of the world degrades.

Mr. THOMAS. You are now saying that somebody who utilizes a nontariff barrier outside the United States, for example, is perhaps using this as an economic weapon in which we aren't allowed to sell our products. But if somebody takes a look at something that we have done, it is not an attempt from their perspective to think we are being noneconomic in our structure. It is that they are tearing down a fundamental democratic structure.

The problem is that through the 1970s, some of you folks got into law on speculation, without specifics, on a hope and a promise, a number of items that you are scared to death that a real world test will, in fact, prove to be unrealistic, uneconomic, and undemocratic

as a matter of fact. That is the real threat, if you want to get serious, in terms of where you are coming from.

You were able in the 1970s to accomplish some things in law which finally, 20 years later, are being exposed as a hope and a promise with no reality. Frankly, we are going to win a few. If you are going to complain that it is undemocratic, then I will put it up to the democratic process. I am going to lose a few. If I complain the loss is undemocratic, let us put it up to the democratic process. That is what we are doing right now and that is what we are doing with this.

I appreciate your view. I think I understand it, I just don't agree with it.

Mr. NADER. I am proud of all the Americans who are alive today, men, women, and children, and the environment that is improved today because of the laws that were passed in the late 1960s and 1970s, and I don't propose to side with any interest that exposes these laws to undemocratic challenges behind closed doors where corporations and government bureaucrats, unremoved from elections, such as you are not, can make the decisions and we cannot appeal before an independent world trade court or before our courts.

I think you have drawn the line between you and me in terms of the philosophy of government, and thank you for doing that.

Mr. THOMAS. I look forward to you in the primary, Ralph.

Chairman GIBBONS. I just want to say that you have caused some of us to miss a very important vote in the House of Representatives. Our lights aren't working up there, and I wish we could do something about it, but we have missed one of those important votes on the approval of the journal. [Laughter.]

Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. I will be very brief. [Laughter.]

Ralph, in terms of the fast track, and we are probably going to be looking to renewing the fast track someplace down the line in the next couple years, I really have to take issue with you when you suggest that fast track is undemocratic and we give up our authority.

First of all, as you well know, under the terms of the fast track, there is a great deal of required consultation that occurs between the administration, Congress, and the private sector. In fact, Public Citizen is as involved as any other company or corporation or labor organization when it comes to meeting with members and when it comes to giving input.

But more importantly, what I find to be really incorrect in your analysis here is that you are here giving input right now. What is this all about? We are holding a hearing right now. We are going to have a series of hearings in which we are going to vet this entire agreement. Whenever it comes up for a vote, we are going to make a decision, each of the 435 of us, as to whether we support the GATT. We have that opportunity. So I can't think of a more open process than this.

Now you might object to the fact that we can't offer amendments, but when we entered into a nonnuclear proliferation agreement with the former Soviet republic, I didn't hear you or anyone from

Public Citizen object to the fact that that was not open to amendment, because we knew that we couldn't reopen the package and then have to go back to Khrushchev or whoever else we were negotiating with to reopen the agreement. You have the same situation here.

What's more, environmental amendments would not be attached on the floor of the House if the agreement were amendable. Instead, it would be sector amendments regarding different industries. The wine industry might want a little more protection, flat glass might want a little more protection. That is what we would really be talking about.

So I don't understand how you could really take issue with what I consider to be the very, very open fast track process. It is one that I think we will need to continue in order to effectively negotiate future multilateral and bilateral trade agreements.

Mr. NADER. You don't understand because you don't agree with my observation on the need to ask one's self how to trade off between expeditiousness in international trade agreement negotiation and ratification and the need for Members of Congress to exercise independent judgment on some of the aspects of this trade agreement that they may not agree with or some that they may want to add, especially in the democracy areas.

We can't go into it now, but we will be proposing ways to try to conform with those two objectives, to maintain some degree of independent judgment and amendatory ability and to make these agreements proceed in an expeditious way. One way is to deal with an intermediate track rather than private meetings.

Mr. MATSUI. We didn't go far enough for you on NAFTA, but there were major changes in that agreement because of the consultation process; because of Public Citizen and everyone else who gave input in the labor and environmental side agreements. Now maybe you did not get as much as you wanted, but nobody wins everything they want. You achieved some significant changes in NAFTA, which is proof that the process works. There is an open process here.

I do understand your point. I think you are just flat out wrong. I can't think of a more open process.

Mr. NADER. By the way, even if I agreed with you that we had input, I am not fighting for our input. We happen to be a citizen group that works full-time here in town. I am fighting for the input from people around the country who need to be part of this process. Your comparison with the nuclear nonproliferation treaty makes a comparison between a treaty that doesn't have these penetrating domestic effects and this GATT, that does have very penetrating domestic effects, right down to cut flowers in your district.

Mr. MATSUI. I will tell you what the problem is. What if you were the Prime Minister of England in 1775—we are all using these crazy analogies today—would you want to trade with the United States? We certainly didn't have environmental standards. We certainly didn't have labor standards comparable to England's standards during that period. Did that degrade the environmental and labor standards of Britain?

Mr. NADER. But there was no international sovereignty jeopardizing our internal standards. That is the difference here. That is

the difference between trading with China and saying, improve your human rights, China. There is no overarching WTO. There is no overarching interference in an antidemocratic procedural manner with local, State, and Federal standards in all of these areas. That is the difference.

What troubles me, I think, about what you are saying is that we are being pushed toward a parliamentary system with these trade agreements. We don't have the same kind of system as England and Canada, where if the Prime Minister says OK, it is whoosh, right through the parliament. Most countries operate that way. When the Head of State says OK in most countries, none of us here have to worry about the Parliament in these other countries.

Mr. MATSUI. Hold on.

Mr. NADER. In our country, it is different. The question is whether we want to preserve——

Mr. MATSUI. If we just——

Mr. NADER. Let me just finish. The question is whether we want to preserve a separation of powers.

Mr. MATSUI. If we disagree strongly enough with the WTO, there is no sanction in the world that would require us to remain in the WTO—only world public opinion. We can withdraw from that in a minute, but we won't probably, because we know that we want to continue trading around the world. But we are not bound by the WTO, any more than we are bound by a U.N. decision.

Mr. NADER. I have two answers to that. One, if you don't change these rules, you are going to be exposed to perpetual trade fines and other sanctions, which is a form of internally intrusive power, I might add.

And second, a lot of times you will have companies and other special interest groups in this country allying themselves with the other country because they want lower standards in this country.

Mr. MATSUI. Let me just say, and I will conclude right now, that unless the United States is willing to penetrate markets in which there is poverty and less developed type infrastructures, such as China and India and Pakistan, we are going to have a high, 20 percent, unemployment rate, because what is happening, as you well know in this country, is technology is moving so rapidly that we are able to create units of goods now with less labor.

We have 260 million people in this country, and unless we find markets for these goods that we are making so efficiently, you are going to see significant unemployment, and that is going to degrade the workers' safety standards and the environment in this country. That is why we need to open up markets. That is why we need Latin America and Mexico and China and Pakistan and India. We will raise their standards at the same time and maintain ours, and I hope that you factor that in your analysis as well.

Mr. NADER. At the beginning when you weren't here, Congressman, I said I was restricting my comments to the democracy dimensions and lack thereof of this agreement. Now you have moved over——

Mr. MATSUI. We cannot have it both ways, however.

Mr. NADER. Wait. You have moved over into the substantive area. And just to bolster what you are saying in a contrary manner, I will say that it is not just a matter of jobs, it is a matter

of preserving our wage levels. It is a matter of preserving our fringe benefits. It is a matter of preserving workplace conditions of decency. If we attach ourselves to a pulldown international trade agreement by allowing these standards to be attacked, we are going to have a lower standard of living no matter how many jobs we have.

But that is another issue. We can debate that on a talk show some day, the 10-second sound bites that they restrict us to. [Laughter.]

Chairman GIBBONS. Let me try to bring this to a conclusion. [Laughter.]

I hope I can put my finger on the differences we have here. Because you were kind enough to submit your testimony in advance, we exposed it to different people around who read it, and here is the response that I get from one of them. I am not sure whether it is the administration talking or whether it is our staff talking, but it says this about, I think, what the debate has been about here, or the main part of the debate has been about here.

It says, the United States, as a contracting party through the WTO, and as a sovereign nation, will be free to accept or reject the WTO decisions that it has participated in. No WTO decision is self-executing under U.S. law but must be enacted by Congress if it were ever to entail a change in U.S. law.

There seems to be a difference of opinion on that statement, and I think that is what we are going to have to pull out as we go through this and try to find out just exactly what is the truth in it. That thick document you have there, somewhere in it contains the truth. We will all have to wade through it. I am glad you did.

I want to thank you for coming and participating in this. It is always lively when you are here, Ralph. We need a little livening up every now and then, so keep up the good work.

Mr. NADER. I don't disagree with what was said there. This agreement cannot require a repeal. What it does is it says, if you don't repeal, if you don't conform, you will be exposed to international trade sanctions or trade penalties in perpetuity until you do conform. And given the realities of political life and who has power in this country, the alliance between domestic lobbies and foreign governments to attack higher standards in our country, to get them down to lower standards abroad, because they are always searching for least-cost jurisdictions, presents us with a sovereignty incursion realpolitik, and history will judge who has predicted the trend right, Congressman Matsui or myself, for example, who are pretty much on opposite sides on this issue, though not on many other issues.

I will end with this prediction. This agreement is going to be a lawyers' litigation dream. It is going to expand K Street law firms very substantially, and it is going to raise issue after issue from your home base to Washington, coming back to haunt you, in terms of your congressional authority and your congressional participation.

Chairman GIBBONS. Hasn't that always been the case? Hasn't that always been mankind's problem as we moved from the tribes to the cities to the city-states to the nations and now to conglomerations of those? Hasn't that always been our trouble, that every

time we put another institution in position to solve problems that we clearly recognize, our problem is we always increase the side effects through litigation and all of that stuff.

Mr. NADER. Except this is avoidable. The function of foresight should not be foreign to Members of Congress. It is the key thing that Congress can contribute, foresight to foresee and forestall. There is no conflict, in my judgment, between global trade and global democratic procedures. In fact, they are complementary.

Chairman GIBBONS. On that fine note, we will call it quits.

Mr. NADER. Thank you very much.

Chairman GIBBONS. We will go to the next group of American citizens who are waiting to be heard. We have the Zero Tariff Coalition, Mr. Richardson, and the American Forest and Paper Association, Mr. Fox.

Our colleague, Mr. Payne, asked me to please regret that he had an unavoidable conflict which will keep him from being present for the next panel. He says that they are important to the district that he represents because they employ a large number of people in his district in the furniture and forest and paper products and textile industries.

He wants unanimous consent to allow him to enter a statement in the record concerning these matters. Without objection, we will do that.

[The following was subsequently received:]

STATEMENT OF HON. L.F. PAYNE

Thank you, Mr. Chairman.

I am sorry I am unable to be here for the next panel. The furniture and wood products industries employ thousands of hard-working men and women in the Fifth Congressional District of Virginia.

The furniture industry, as I am sure Mr. Richardson will point out, was included in the zero-for-zero sectors of the Uruguay round. This means new and open markets around the world for our furniture products manufactured in southside Virginia.

I am very pleased with the results of the Uruguay round in the furniture sector and hope the United States can continue to break down barriers in other sectors in order to create new markets abroad for U.S. goods and services and new jobs for American men and women.

One such area that needs to be improved in the Uruguay round is the paper and wood products sector. In the wood products area, Japan's continued reluctance to better its offer of a 50 percent reduction over 5 years is unacceptable. I urge our negotiators to continue to press for an elimination of all tariffs on wood products over the next 5 years.

Mr. Chairman, I hope we can continue to work on these and other outstanding issues prior to the signing of the agreement in Marrakesh on April 15.

Mr. THOMAS. Mr. Chairman.

Chairman GIBBONS. Yes, sir?

Mr. THOMAS. Before we begin, just so any of the history buffs in the audience don't come after me or the papers report when they pick up a tape of this particular hearing, I want people to understand that I do know that the ratification of the Constitution occurred from 1789, and 1783 was several of the first Convention and others, and I used only 1783 as a date that is the starting point—1789 was the ending date. I don't want anybody mobbing me about the use of that date.

Chairman GIBBONS. They could get things over quicker in those days than we can now. [Laughter.]

Just to negotiate this little old agreement took 7 years, and it is not near the significance of the U.S. Constitution.

Mr. Richardson, go right ahead.

STATEMENT OF JOSEPH E. RICHARDSON II, CHAIRMAN, RICHARDSON BROTHERS CO., SHEBOYGAN, WIS.; AND CHAIRMAN OF THE BOARD, AMERICAN FURNITURE MANUFACTURERS ASSOCIATION; ON BEHALF OF THE ZERO TARIFF COALITION

Mr. RICHARDSON. Mr. Chairman and other members of the subcommittee, good afternoon. Thank you for the opportunity to present the views of the American Furniture Manufacturers Association, which I will call AFMA from now on, on the recently concluded Uruguay round.

I am Joe Richardson II, the chairman of the board of AFMA and chairman of Richardson Brothers Co., which just happens to be the oldest family owned furniture manufacturer in America, operating continuously under my family's direction since 1848.

AFMA is our Nation's largest furniture manufacturing trade association. Over \$18 billion in sales is produced annually by the domestic furniture manufacturing industry, and production by AFMA member companies exceeds 75 percent of that figure. Additionally, AFMA member companies have home offices or facilities in every State of the Union and employ more than 500,000 people.

I am pleased to be here today representing not only my own company and the furniture manufacturing industry, but also the Zero Tariff Coalition, of which AFMA is a member. The Zero Tariff Coalition consists of numerous associations, thousands of companies like mine in industries ranging from natural resources, such as forest products and nonferrous metals, to heavy agricultural and construction equipment, to high technology semiconductor, computer, and copier manufacturers, all the way to consumer products, such as beer, distilled spirits, toys, and, of course, furniture.

What brings these diverse industries together is a common interest in capitalizing on their competitiveness and opening world markets to their products. They also share a common disadvantage in international trade, and that is that there are very low or nonexistent tariffs on competitors' products coming into the United States while our products often face much higher tariffs going into foreign markets.

While tariff negotiations are not yet concluded, and there are some significant zero tariff sectors still outstanding, as you will hear from my fellow panelists, significant progress has been achieved with agreement among our major trading partners to eliminate the tariffs in a number of sectors. These include agricultural equipment, construction equipment, beer, certain distilled spirits, medical equipment, paper, steel, pharmaceuticals, toys, and, again, furniture. In the electronics sector, tariffs were eliminated on some products and significantly reduced on others. While not as far-reaching as that industry had hoped for, the agreement still represents an improvement over time and gives us new opportunities for U.S. exports.

For U.S. furniture, as I just indicated, a result of the GATT is that foreign duties on U.S.-made furniture products are going to be

eliminated for all major U.S. export markets. Eliminating tariffs on U.S. furniture for the European Community, Scandinavian countries, and Japan is going to provide a definite added incentive for America's furniture manufacturers to compete in the world economy.

In the recent recession years for U.S. furniture manufacturers, which extended from 1989 to 1991, the value of our furniture shipments decreased approximately \$1.3 billion. Regardless of that, U.S. furniture exports during that same period increased over 82 percent. Clearly, without those export markets, American furniture manufacturers and our workers would have experienced an even greater negative recessionary effect.

With the removal of tariffs on U.S. products in these major markets plus significant reductions in others, U.S. furniture manufacturers will be able to act aggressively in obtaining a greater share of the international market for our products, which happen to be, incidentally, the very best in the world. According to the U.S. Department of Commerce figures, since 1989, U.S. exports of furniture have more than doubled, and as a share of domestic shipments, American furniture exports have increased from 3 to 6 percent.

With this in mind, as AFMA's current president, Jerome Bolick, president of Southern Furniture, said on December 15 of last year, "Through his solid efforts, U.S. Trade Representative Kantor has provided greater security and new opportunities for American furniture manufacturers and their workers."

I urge you and your colleagues to pass the implementing legislation promptly and allow us to get about our business of taking advantage of new international market opportunities, which are very exciting.

If you have any questions, I will be very happy to answer them. I want to thank you very much.

[The prepared statement follows:]

**TESTIMONY OF JOSEPH E. RICHARDSON II
AMERICAN FURNITURE MANUFACTURERS ASSOCIATION**

Mr. Chairman, and other members of the subcommittee:

Good afternoon and thank you for the opportunity to present the views of the American Furniture Manufacturers Association (AFMA) on the recently concluded Uruguay Round.

I am Joseph E. Richardson II, the Chairman of the Board of the AFMA and Chairman of Richardson Brothers Company, the oldest family owned furniture manufacturer in America, operating continuously since 1848.

AFMA is our nation's largest furniture manufacturing trade association. Over \$18 billion in sales is produced annually by the domestic furniture manufacturing industry and production by AFMA member companies exceeds 75% of that figure. Additionally, AFMA member companies have home offices or facilities in every state and employ more than 500,000 people.

I am pleased to be here today representing not only my own company and the furniture manufacturing industry, but also the Zero Tariff Coalition, of which we are a member.

The Zero Tariff Coalition consists of numerous associations, thousands of companies, like mine, in industries ranging from natural resource based, such as forest products and non-ferrous metals, to heavy agricultural and construction equipment, to high technology semiconductors, computer and copier manufacturers, to consumer products, such as beer, distilled spirits, toys and furniture. What brings these diverse industries together is a common interest in capitalizing on their competitiveness and opening world markets to their products. They also share a common disadvantage in international trade, and that is very low or non-existent tariffs on competitors' products coming into the U.S., while our products face much higher tariffs in foreign markets.

As we watched our foreign competition become stronger, even as we improved our own productivity and competitiveness, it became clear that the disparity in tariff levels must be eliminated. We advised our government negotiators that a partial reduction based on some formula would continue to leave us in a disadvantageous position against our foreign competitors, and what was necessary was reciprocal tariff elimination in our sectors. This became the zero-for-zero tariff initiative, which two successive Administrations adopted and pressed hard to achieve. Our foreign trading partners resisted the zero tariff initiative for years, insisting on a formula reduction approach to tariff negotiations, but fortunately our negotiators held firm.

While tariff negotiations are not yet concluded, and there are some significant zero tariff sectors still outstanding, as you will hear from my fellow panelists, significant progress has been achieved with agreement among our major trading partners to eliminate tariffs in a number of sectors, including: agricultural equipment, construction equipment, beer, certain distilled spirits, medical equipment, paper, steel, pharmaceuticals, toys, and furniture. In the electronics sector, tariffs were eliminated on some products, and significantly reduced on others. While not as far reaching as that industry had hoped for, the agreement represents an improvement over time, and new opportunities for U.S. exports.

For U.S. furniture, as I just indicated, a result of the GATT agreement is that

foreign duties on U.S. made furniture products will be eliminated for all major U.S. export markets.

Eliminating tariffs on U.S. furniture for the European Community, Scandinavian countries and Japan will provide a definite added incentive for America's furniture manufacturers to compete in the world economy. In the recent recession years for U.S. furniture manufacturers (1989-1991), the value of furniture shipments declined by approximately \$1.3 billion. Regardless, U.S. exports during that same period increased over 82%. Clearly without those export markets, American furniture manufacturers and their workers would have experienced an even greater negative recessionary effect. With the removal of tariffs on U.S. products in these major markets, plus significant reductions in others, U.S. furniture manufacturers will be able to act aggressively in obtaining a greater share of the international market for their products—the best in the world.

According to U.S. Department of Commerce figures, since 1989, U.S. exports of furniture have more than doubled and as a share of domestic shipments, American furniture exports have increased from 3% to 6%. With this in mind, as AFMA's current President Jerome W. Bolick, President of Southern Furniture said on December 15 of last year, "Through his solid efforts, U.S. Trade Representative Kantor has provided greater security and new opportunities for American furniture manufacturers and their workers."

I urge you and your colleagues to pass the implementing legislation promptly and allow us to get about the business of taking advantage of new international market opportunities.

I will be happy to answer any questions you may have. Thank you.

Chairman GIBBONS. Thank you, Mr. Richardson. I am happy that they were as successful as they were in the furniture negotiations. I think you zero-for-zero folks did a good job. It was a good strategy and worked well. We will try to follow through on it.

We have next for the American Forest and Paper Association, Mr. Fox.

STATEMENT OF J. CARTER FOX, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CHESAPEAKE CORP., RICHMOND, VA.; ON BEHALF OF THE AMERICAN FOREST & PAPER ASSOCIATION

Mr. Fox. Thank you, Mr. Chairman. My name is Carter Fox and I am president and chief executive officer of Chesapeake Corp., with headquarters in Richmond, Va.

I am testifying today as chairman of the American Forest and Paper Association, or what we call AF&PA. The U.S. forest products industry appreciates the opportunity you have provided to express our views on the results of the Uruguay round market access negotiations as they relate to wood and paper products.

The U.S. paper and forest products industry has been ranked among the most competitive in the world. We have historically relied on competitive strength and not tariff protection to win markets. Our competitors have taken advantage of a full decade of zero tariff access to our market and others where preferential tariffs apply while maintaining tariff barriers as high as 9 percent on U.S. paper products and as high as 20 percent on U.S. wood exports.

Thus, the priority objective for the U.S. paper and forest products industry in the Uruguay round was the elimination of all tariffs on wood and paper products over 5 years. This point is critical. At any tariff level short of zero, and for however long it takes to get to zero, the U.S. paper and forest products industry will be structurally disadvantaged in world markets.

If we compare the results to date with the original zero tariff objectives, it is clear that we have some distance to go.

On wood products, we still do not have a deal. Japan has so far been able to block an emerging international consensus for eliminating wood tariffs. As a result, there are a variety of offers on the table. The Japanese have offered to cut their tariffs by 50 percent over 5 years. The European Union at first agreed to zero tariffs in 10 years, but in the face of Japanese intransigence, they reverted to an earlier offer of 44 percent. Canada has made a conditional zero tariff offer, which must be matched by the European Union and Japan.

The current Japanese offer is unacceptable because it does not deliver economically. According to a study performed for AF&PA by DRI/McGraw-Hill, the terms the Japanese are setting would deny the United States \$8.8 billion in increased exports by the year 2001 when compared with our zero tariff request. Japan's refusal to participate in global tariff elimination for wood clearly demonstrates how Japanese protectionism can and does have global market effects.

We support the tough position Ambassador Kantor and the administration have taken since December in insisting that the market access negotiations on wood remain open.

In the paper products negotiations, our top priority trading partners, including the European Union, Japan, and Korea, have now agreed to eliminate tariffs, but at the insistence of the Europeans, the tariff cuts will be phased in over an abnormally long 10-year period. With the normal 5-year phasein, the cumulative gain in U.S. paper exports between now and the year 2005 would be close to \$10.1 billion, but with a 10-year phasein, the U.S. export benefits are reduced by \$3.3 billion.

It is particularly ironic that the European Union is stalling the elimination of paper tariffs, because while U.S. paper producers struggle to overcome high tariffs in Europe, European suppliers have enjoyed virtual duty-free access to the U.S. paper market for over a decade. If we merely accede to the European Union demand for a 10-year phasein period, we are, in essence, helping them further protect their home market.

We believe there may be some room for improvement in the European Union position and we urge the U.S. Trade Representative to aggressively follow through with the European Union and make sure this issue is resolved before April 15.

While tariff elimination is clearly the most important goal of the U.S. paper and forest products industry, we are also concerned about language in the agreement with regard to nonactionable subsidies, especially government funding to assist industries in other countries to comply with new environmental standards and funding by sub-Federal-level entities.

In summary, Mr. Chairman, it is important that the administration continue to aggressively pursue the elimination of both wood and paper tariffs in 5 years. For the combined forest products industry, this would mean \$12 billion in new exports.

But even more important, the failure to achieve zero in wood products will lock in a crippling disadvantage to the competitiveness of America's wood products industry. An industry that is globally competitive today could be rendered permanently and structurally disadvantaged. At risk are not only the jobs related to exports, but with few tariffs on imports, jobs dependent on domestic sales are in jeopardy as well.

Thank you for giving the U.S. forest products industry this opportunity to testify on the Uruguay round agreement. I will be happy to answer any questions you may have.

[The prepared statement follows:]

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RICHMOND, VIRGINIA**

**REPRESENTING THE
AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)**

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE**

**WASHINGTON, D.C.
FEBRUARY 2, 1994**

Thank you, Mr. Chairman and Members of the Committee. My name is Carter Fox. I am President and CEO of the Chesapeake Corporation, with headquarters in Richmond, VA.

I am testifying today as Chairman of the American Forest & Paper Association (AF&PA). I will be reporting the U.S. forest products industry's view of the results of the Uruguay Round market access negotiations as they relate to wood and paper products.

The American Forest & Paper Association (AF&PA) represents approximately 550 member companies and related trade associations (whose membership is in the thousands). Our members grow, harvest, and process wood and wood fiber, manufacture pulp, paper and paperboard products from both virgin and recovered fiber, and produce solid wood products. As a single national association, AF&PA represents a vital national industry which accounts for over seven percent of the total U.S. manufacturing output.

The industry employs some 1.4 million people, and ranks among the top 10 manufacturing employers in 46 states, with annual wages paid of about \$46 billion. The forest and paper products industry generates sales of \$200 billion annually. With exports of \$17 billion in 1992, the industry makes an important contribution to the U.S. balance of payments. Exports have been, and will remain, the key path to future growth for our industry.

The U.S. forest products industry has been ranked among the most competitive in the world. We have historically relied on competitive strength -- not tariff protection -- to win markets.

In fact, the U.S. forest products industry agreed to the virtual elimination of U.S. tariffs on wood and paper products in the Tokyo Round of the GATT. Our competitors have taken advantage of a full decade of zero tariff access to our market and others where preferential tariffs apply, while maintaining tariff barriers as high as nine percent on U.S. paper products and 20 percent on U.S. wood exports.

Thus, the priority objective for the U.S. forest products industry in the Uruguay Round market access negotiations, as submitted to U.S. negotiators in 1987, was the elimination, through the "zero for zero" tariff initiative, of all tariffs on wood and paper products over five years. In fact, the forest products industry -- paper and wood -- was the first manufacturing industry to propose "zero for zero" treatment for an entire industry sector. This objective -- "zero in five" -- remains our goal.

The importance of fully achieving this goal cannot be overemphasized. At any tariff level short of zero -- and for however long it takes to get to zero -- the U.S. forest products industry will be structurally disadvantaged in world markets. If we compare the Uruguay Round results to date with the official zero tariff objectives, it is clear that we still have some distance to go.

WOOD PRODUCTS

Preparing for the Uruguay Round

Enormous capital investments made by the lumber and wood products sector in the late 70s and early 80s have created a world class industry, and one of the world's low-cost producers. Ranked among the most competitive industries in the nation, high productivity has made the wood products industry a shining star of U.S. industrial competitiveness internationally.

Seven years ago, when the industry first developed its "zero tariffs in five years" negotiating objective for the Uruguay Round, it built upon this global position of strength. The zero tariff initiative, at that time, was an opportunity to take advantage of its international competitiveness.

Today, circumstances for the wood products industry have changed. Zero tariffs are now no longer a luxury but a matter of survival. As a consequence of unfair tariff structures maintained during the intervening years by foreign governments, the competitive position of this industry can quickly deteriorate. Tariff escalation and preferential tariffs are the primary examples of this problem.

The international marketplace for wood fiber is rapidly trending towards global parity. Countries with forest resources, and there are many, including less-developed and newly-industrialized countries, are investing in state-of-the-art manufacturing facilities -- many subsidized by their governments. As the cost and quality differences narrow, tariffs and non-tariff barriers determine into which market these products will flow.

In the absence of tariff elimination, the virtually zero tariff U.S. market becomes the market of preference. Tariff protection of five, ten, or fifteen percent or more by our trading partners will ensure that value-added wood products from overseas will flood the U.S. market which has little or no tariff protection and very liberal GSP programs for wood products. In effect, the failure to eliminate high tariffs in other countries will encourage the relocation of U.S. assets overseas and the importation of value-added wood products to the U.S. market.

Tariff escalation effectively bars the entry of value-added products in almost all of our overseas markets. Japan maintains high tariffs as barriers to imports of value-added wood products, while unfinished goods enter duty-free. Most of the \$2.8 billion in Japanese imports of U.S. wood products have only occurred on a few tariff-free items, while access to an enormous market for manufactured wood building products is denied. Products on which Japan charges a duty make up only six percent of U.S. wood exports to Japan.

The preferential tariff systems of developed countries are a serious problem for U.S. exports in most of the other major consuming markets. The U.S., Canadian, and New Zealand wood products industries are virtually the only significant producer nations facing wood tariffs in developed markets, while Brazil, Indonesia, Malaysia and others can in most cases export their products without facing any trade inhibiting tariffs. Preferential tariffs make zero tariffs an already accomplished fact for almost all producers except the United States.

December Results of the Uruguay Round -- Wood Products

As of today, we still do not have a market access on wood products. Japan has so far been able to block an emerging international consensus for the elimination of tariffs on wood products. As a result, the issue of tariff elimination for wood products remains open:

- o The U.S. has offered to reduce its wood tariffs to zero.
- o Canada has made its zero tariff offer to the EU and Japan conditional on agreement among the Quad members on zero tariffs for wood.
- o The Japanese have offered to cut their tariffs by 50 percent over five years.
- o Further, unless the Japanese agree to the zero tariff option, the EU is only willing to cut their tariffs by approximately 44 percent.

The U.S. forest products industry is outraged at the intransigence of the Japanese in refusing to agree to zero tariffs for wood products, and we appreciate the tough position that Ambassador Kantor and the Administration have taken since December in insisting that the market access negotiations remain open with Japan with regard to wood and other zero tariff sectors.

The current Japanese offer of a 50 percent cut over five years for wood products is unacceptable to the U.S. industry for one very important reason -- it does not deliver economically. It denies our industry the majority of benefits we anticipated from the Uruguay Round. According to a study performed for AF&PA by DRI/McGraw-Hill, failure to achieve the elimination of tariffs on wood products in five years denies the U.S. \$8.8 billion in increased exports and 17,500 jobs by the year 2001. (DRI/McGraw-Hill is the same firm used by USTR to estimate the nation-wide economic benefits of the Uruguay Round.)

We simply cannot let the Japanese off the hook on this one, no matter how many politically sensitive problems they have...this time.

The U.S. forest products industry has been deeply involved in the Japanese wood products markets for over a decade, spending millions of dollars and committing enormous personnel resources to promote U.S. building products. Our industry associations have offices in Japan representing lumber and plywood for structural and industrial applications, and hardwoods for furniture and interior uses. We have done the promotional things U.S. companies have been told we must do if we wish to sell in Japan. Nevertheless, the vast majority of U.S. building products are still almost totally excluded from the market because of trade barriers -- first and foremost, tariff barriers.

Even the 1990 Super 301 agreement has not eliminated the barriers we face in Japan. Although the agreement made some progress toward reducing tariff escalation, the cuts were not deep enough and were staged over such a long period of time that they don't afford sufficient market access in Japan in the 1990s. They have not yet been eliminated, so Japan has already enjoyed an additional three years of tariff protection.

Further, the current Japanese strategy to take credit for their Super 301 concessions twice, once bilaterally and again in the Round, should not be tolerated. To claim concessions in the Round for what was agreed to three years ago bilaterally will make a sham of the tariff negotiations.

Complete tariff elimination on wood products is essential, particularly with respect to Japan, as zero tariff offers by Canada, the EU and other countries are contingent on Japan going to zero. The Uruguay Round results to date have taken seven long years to achieve, but the benefits for the U.S. wood products industry are still missing. This is a once-in-a-decade opportunity to achieve tariff elimination. Our negotiators simply should not settle for less because the U.S. wood products industry cannot support an agreement that provides less. We intend to do everything we can to support our negotiators in this effort.

PAPER AND PAPER PRODUCTS

Preparing for the Uruguay Round

Compared to U.S. tariffs on paper products, which have for the most part been reduced to zero, European tariffs on paper products range from six to nine percent. As indicated in the attached chart, when paper companies try to sell in Europe, they have to compete with Nordic suppliers who enjoy tariff-free access as a result of European Free Trade Area (EFTA) preferences, and less developed countries which benefit from preferential tariffs, as well as with internal EC producers. This is exactly the kind of uneven playing field the Uruguay Round was intended to eliminate, and the U.S. paper and paper products industry seizes the opportunity to seek the total elimination in foreign tariffs, in as short a time period as possible, but not longer than five years.

December Results of the Uruguay Round -- Paper Products

Our top priority trading partners (including the EU, Japan and Korea) have now agreed to eliminate tariffs on paper and paper products, but, at the insistence of the European Union, the tariff cuts will be phased in over an abnormally long ten-year period.

We recognize that a tremendous effort was required to reach agreement among the Quad members on zero tariffs for paper products, and we appreciate the efforts of all the U.S. negotiators involved. However, a zero tariff in ten years simply does not convey the same economic benefits as a zero tariff achieved in five years.

With the normal five-year phase-in, the cumulative gain in net exports between now and the year 2005 for U.S. paper, paperboard and converted products would be close to \$10.1 billion. With a ten-year phase-in, the U.S. export benefits are reduced by \$3.3 billion. A five-year phase-in is critical, given the global restructuring currently underway in this industry.

Five years is the normal GATT staging period for tariff reductions, and in keeping with past Rounds, the Uruguay Round staging for virtually all sectors is five years -- except for paper, wood, toys and beer. The fact that the EU went outside the agreed framework and insisted on a ten-year phase-in period means that we have effectively obtained the equivalent of a three to four percent tariff -- not zero -- in terms of trade benefit to the industry.

It is particularly ironic that the EU is stalling the elimination of paper tariffs because, while U.S. paper producers struggle to overcome a wall of protective tariffs in Europe, Europe suppliers have enjoyed virtual duty-free access to the U.S. paper market for over a decade. If we merely accede to the EU demand for a ten-year phase-in period, we are, in essence, helping them further protect their home market by refusing to grant U.S. paper suppliers reciprocal access for another decade. Some U.S. paper companies that are seeing their share of overseas markets eroded due to tariff disparities can continue to compete for five years until tariff barriers are eliminated; however, waiting for ten years may mean that some of those companies will no longer be able to compete successfully.

During recent meetings in Brussels, EU officials indicated to representatives of AF&PA and the Canadian paper industry that they would consider requests for five-year staging on specific paper products. Given this window of opportunity with the EU, it is very important that we continue to push for accelerated staging on zero tariffs for paper.

NON-ACTIONABLE SUBSIDIES UNDER THE AGREEMENT

While the zero tariff initiatives for wood and paper products are clearly the most important goals of the U.S. forest products industry, we are also concerned about language in the Agreement with regard to non-actionable subsidies under the GATT Subsidies Code.

Among the objectives of the U.S. forest products industry in the Uruguay Round was the strengthening of the GATT Subsidies Code in order to establish greater discipline over foreign government subsidies to competing wood and paper producers. At the same time, our industry wanted to ensure that the U.S. countervailing duty laws were not diluted and would continue to be the valuable tool they have been in the past in fighting unfairly traded imports.

We are particularly concerned that these two goals have not been met under the Agreement's language with respect to non-actionable subsidies. According to the Executive Summary of the Uruguay Round Agreement, the objective of some negotiating parties in the GATT was to restrict the application of U.S. countervailing duty remedies and to protect certain forms of subsidies from any type of trade action. We in the U.S. forest products industry are concerned that those other "negotiating parties" may have succeeded only too well. We are concerned that large loopholes have been created that will greatly weaken the effectiveness of our countervailing duty laws.

Environmental Subsidies

The U.S. forest products industry is concerned with the provision allowing all countries to offer subsidies to cover up to 20 percent of the cost of meeting new or stricter environmental regulations. Although the Agreement limits such subsidies to "a one-time measure" to cover the cost of adapting existing facilities to new environmental regulations, it is difficult to consider how a measure could be sufficiently circumscribed as to eliminate ancillary benefits such as increased level of output or improved cost competitiveness. Moreover, since capital is fungible, when governments cover the cost of environmental compliance -- a \$1 billion dollar per year charge for the U.S. paper industry, for example -- it frees up funds for other investments. Further, it is our understanding that this "one-time" benefit could be made available for compliance with subsequent enhancements to environmental regulations, as well.

This provision is of particular concern to the U.S. forest products industry, which is among the most capital intensive of all U.S. manufacturing industries, and one that is subject to environmental regulations which are often much more stringent than those of major competitors. It is unlikely U.S. industry can expect to benefit from any domestic government subsidies to assist in compliance. It is difficult to see how this particular pragmatism is consistent with U.S. trade interests.

Since this non-actionable environmental subsidy could have a significant effect on competitiveness in our industry, the U.S. forest products industry believes it is important that the Congress and the Administration limit its applicability by definition in the Statement of Administrative Action and the implementing legislation. Further, we strongly urge that this Committee, in particular, consider providing some subsidy-offsetting vehicle to provide for comparable investment equity for affected U.S. producers.

Regional Subsidies

The language in the Agreement which confirms "certain sub-federal level financial assistance as non-actionable under the Agreement" is also troublesome to our industry. On many occasions, the U.S. forest products industry has sought U.S. government intervention to counter Canadian federal and provincial subsidies to the Canadian pulp and paper industry. The prohibition of such subsidies was a main objective of the U.S.-Canada Free Trade Agreement and the NAFTA. On both occasions, the U.S. government indicated that resolution of this issue would have to await Uruguay Round GATT Subsidies Code negotiations.

We still firmly believe that subsidies, at any governmental level, provided to firms producing products that are primarily exported to the U.S. market, or compete with U.S. products in third country markets, should be prohibited. In addition, we are concerned by and dissatisfied with the lengthy implementation period granted developing countries for elimination of prohibited subsidies. We hope to work with the Committee and the Administration to address these concerns in the implementing legislation.

CONCLUSION

In summing up, Mr. Chairman, despite the efforts of the Administration, the European Union and Japan have refused to agree to match the U.S. tariff offers in the wood and paper sectors. Japan has refused to eliminate tariffs on wood products, and the EU has delayed staging in paper over ten years. It is important that the Administration continue to aggressively pursue both these issues. For the combined forest products industry, this would mean \$12 billion more exports over ten years.

But even more important, the failure to achieve zero in wood products in five years will lock in a crippling disadvantage to the competitiveness of an industry which, directly or indirectly, provides jobs for 2.8 million Americans. An industry that is globally competitive today would be rendered permanently, structurally disadvantaged. At risk are not only the jobs related to exports but, with few tariffs on imports, jobs dependent on domestic sales are in jeopardy as well.

The Administration has often made it clear that it intends to make sure that U.S. economic interests are not sacrificed to other concerns in international negotiations. We urge the Administration to put current concerns regarding the process of Japanese reform in this context. We cannot accept a Uruguay Round package which fails to redress this fundamental unfairness and contains within it the seeds of decline for an industry of this magnitude would deal a serious blow to the economies of hundreds of rural communities across the country which depend on the forest products industry for employment.

U.S. trading partners must be convinced of the need to match U.S. offers -- now. We urge you to send an unmistakable signal that the future of an industry which provides jobs to 1.6 million Americans is not tradeable, and that the only final package you will accept is one which provides fair market access--at zero tariffs under the normal five year Uruguay Round staging--for America's wood and paper products industry.

**IMPORT TARIFFS APPLIED BY THE EUROPEAN UNION
ON SELECTED PAPER AND PAPERBOARD**

~~~~~FROM~~~~~			
<u>PRODUCT</u>	<u>U.S.</u>	<u>EFTA*</u>	<u>LDC/EASTERN EUROPE</u>
Newsprint	duty free quota or 9.0%	0	0
Printing and Writing			
Uncoated	9.0%	0	0
Coated	9.0%	0	0
Kraft Linerboard	6.0/9.0%	0	0
Bleached Paperboard			
Coated	8.0/9.0%	0	0
Uncoated	9.0%	0	0

* EFTA: European Free Trade Association

Chairman GIBBONS. Thank you, Mr. Fox. I hope that our negotiators will get a better deal before April 15. We will continue pushing them on that. I know the fine role you all play in the U.S. economy and in the world economy. Keep pushing us, we will push them, and we will push together.

Mr. FOX. Thank you.

Chairman GIBBONS. Mr. Richardson, we want to thank you and Mr. Fox for coming and helping us. Thank you very much.

Mr. RICHARDSON. Thank you, Mr. Chairman.

Mr. FOX. Thank you.

Chairman GIBBONS. Let us go to a panel largely around the textile and garment issue. We have Carlos Moore of the American Textile Manufacturers Institute; for the American Apparel Manufacturers Association, Mr. Martin; for the Amalgamated Clothing and Textile Workers Union, Mr. Gundersheim; for the U.S. Association of Importers of Textiles and Apparel, Julia Hughes; and from the National Retail Federation, Robert Hall.

We welcome all of you here. Let us go to Mr. Moore first. He is the first one on the list.

#### **STATEMENT OF CARLOS MOORE, EXECUTIVE VICE PRESIDENT, AMERICAN TEXTILE MANUFACTURERS INSTITUTE**

Mr. MOORE. Thank you, Mr. Chairman. I appreciate the opportunity to appear here today. I am going to summarize my statement, because it is, I think, somewhat extensive.

Chairman GIBBONS. I will repeat that all statements will appear in the record in their entirety.

Mr. MOORE. Thank you. My name is Carlos Moore and I am executive vice president of the American Textile Manufacturers Institute. ATMI is the national trade association for the textile mill products industry, and we account for about 80 percent of all of the fiber that is consumed in this country. Our member companies produce a wide variety of textile mill products, which I am sure you are aware of, apparel fabrics and yarns, home furnishings, industrial, medical textiles, et cetera.

I also serve in an advisory capacity to the government. I am chairman of the Industry Sector Advisory Committee. We have submitted a report, as the law requires, on our views about the negotiations and our recommendations to the Congress. I believe that the conclusions and the observations and this testimony are consistent with that report, although that report goes into more detail.

Our objectives in the Uruguay round have really focused on four major issues. We have sought for many years now, as this round unfolded, to get a market access agreement in which all countries would be forced to open their textile apparel markets in order to get the benefits of quota liberalization into our market. We also tried to improve the provisions that call for the phaseout of the multifiber arrangement, stretch them out over a longer period of time, and improve some of the aspects of it.

We also urged that our tariffs not be cut significantly, because we were contributing to this round by having our quotas liberalized.



Finally, we wanted to make sure that the People's Republic of China did not benefit from this round, since it is not a GATT member and, in fact, keeps a closed, nonmarket regime in place.

Based on what has happened so far, we find that, in fact, there has been some progress. The tariff cuts on U.S. textile and apparel were not that significant, although in many areas there were cuts that were very deep, particularly wool fabrics. However, on balance, the tariff reductions offered by our government have been more or less in keeping with what we felt we could live with. We appreciate the fact that Ambassador Kantor and his negotiators held the line on this issue, because the European Community, in particular, wanted our tariffs cut by the maximum U.S. authority.

Regarding the People's Republic of China and other non-GATT members, our negotiators were largely successful in denying tariff benefits to those countries by not making cuts on those items in which China was particularly interested. We have a larger problem with the People's Republic of China, because they are trying to get membership into the GATT and/or the World Trade Organization. At this point, we are not quite sure what will be the accession criteria for its joining either the GATT or the WTO. It is our view that China should pay a very high price for admission, because it has shown little inclination to act as a trading partner under the kinds of disciplines that the GATT or the WTO calls for.

I would like to spend a little more time on our remaining two issues. One is the provisions and timing of the MFA phaseout. In previous testimony, we cited that there would be enormous job losses; the potential for them is there, if the MFA is phased out in a way that permits imports to soar into this country without the proper safeguards or unfair trade practice laws that can deal with that.

Our analysis has not changed, and neither have the provisions of the phaseout. We think that there are going to be very large job losses over the next 10 years and beyond. Ambassador Kantor in his testimony last week said that he would try to lessen that impact somewhat in the integration process that is called for in the phaseout by integrating the less sensitive items first and more import-sensitive last.

That is helpful, but regardless of what happens there, import quotas will increase by around 150 percent during the 10-year phaseout. That is much, much faster than our market grows, so it will have an adverse impact on jobs and production in this country.

The other remaining issue is one that, if dealt with properly, can help to lessen that damage somewhat. That is market access. However, it cannot totally counterbalance the damage from the job losses or the production losses. Market access is also one of the few remaining issues that is still open. Ambassador Kantor told us, and testified to that effect as well, that he is personally committed to trying to gain increased access in key markets for our products.

As we look at the picture today, though, much remains to be done if we are going to achieve that access and there is not a lot of time to do it. A number of countries have said they would open their markets, but the key countries, the countries which ship us most of the textiles and apparel that they produce, have not made acceptable offers. Some of them haven't made any offers at all to

open their markets, and I am talking about India, Pakistan, Indonesia, Thailand, the Philippines, Egypt, and Turkey, big textile apparel exporters with closed markets.

Mr. Chairman, for some years, our industry has been told that we should not complain about imports, that we should try to export more and compete in world markets. Today, we are investing very heavily to become more competitive, to become more productive, to try to respond quicker to our customers' needs, many of whom are represented at this table today.

For example, this year, we are going to invest over \$2.2 billion in new equipment and some new facilities, and that is a record for this industry. I think that it indicates our commitment and it indicates that our position on trade has changed.

You were probably surprised when we supported NAFTA and worked very hard for its enactment, based on some of our other legislative efforts.

Chairman GIBBONS. Pleasantly surprised. Happily surprised.

Mr. MOORE. I hope you will also be happily surprised to know that we are working very hard on NAFTA parity for the Caribbean and Central America.

Chairman GIBBONS. Yes sir. We have to push the administration a little harder on that.

Mr. MOORE. I would agree completely, because I think the need for parity is even more urgent now that the Uruguay round has become a reality, because the countries in the Caribbean region are going to get hit both by NAFTA, being at a disadvantage, and by the fact that the Uruguay round will open up our market to the Far East.

We really thank you for your leadership and your interest in sponsoring the parity bill. We look forward to working with you on that.

We really are committed to looking at foreign markets, developing them, and trying to sell our exports. But when a country like India is allowed to ship us \$2 billion of textiles and apparel and India bans the importation of everything except a meager \$12 million, as it did in 1992—that is \$2 billion versus \$12 million—we really need our government's help to get that market open.

Some of our critics have said that we really wouldn't be able to sell in India. But we have looked at some World Bank numbers and find that there are 100 million people in India with incomes greater than our own, or at least as high as our own. We know there is a market for our products there. We hear it from agents and distributors in India, saying, can't you get your government to get the goods in here? We would like to buy your blue jeans, your sweatshirts, T-shirts, some of your fabrics, a lot of household furnishings. So we know we can sell goods in India, and that is just an example of what is out there.

We really would urge this committee and the Congress generally to advise the administration that they must get these kinds of reciprocal market openings. We really would urge the committee to take a position that if a country fails to give us this access, then they should be denied entry into the WTO because they really haven't fulfilled the obligations that are required for membership.



Ambassador Kantor has extolled as one of the benefits of the WTO that there should be no free riders. It seems to us that if a country were to decide that it didn't want to adhere to the anti-dumping provisions of the WTO, I am sure that you would say that they cannot be a free rider. They should not be allowed in.

I don't think it is any different from a country saying, we want all the other benefits of the WTO, but we want to keep our textile and apparel market closed. I think, in that case, it also would not have fulfilled its rights or obligations to become a member.

I know that people say that you don't need to deny such a country WTO membership because there are provisions in the agreement so that you can take action against it if it keeps its textile market closed. We have heard that argument, we have examined it very closely, and it really, in our judgment, does not provide an adequate lever to pry open a closed market.

As an example, and I go into it in detail in my testimony, but very quickly, all we would have at our disposal to try to get India, for example, to open its market, once the WTO is adopted, would be to complain under the WTO dispute settlement mechanism.

And if we won that process—and we could win it, perhaps, because many other countries have opened their markets—but if we were to win that process and win the appeal, which I am sure the Indians would do, then after 16 months, our remedy would be that we could withhold the accelerated growth of India's quota during the MFA phaseout. That is not a very big penalty, because India would still find that its quotas were growing 6 or 7 percent per year, and over the 10-year phaseout their quotas into our market would double.

The more important thing is that after that phaseout, India's market could still be completely closed and our quotas would disappear. So we would have gotten nowhere in terms of prying open its market.

I believe that what is needed is a statement by the United States before the WTO is adopted, before it is even signed on April 15 by the administration, that in order to fulfill market access obligations, countries have to commit to meet the market-opening criteria that the United States established. I think that is crucial in terms of achieving the kind of balance of concessions that is needed in the WTO. But I think it is also crucial for this industry and our workers so that we can have opportunities to grow through exporting.

I will conclude this by saying there are other aspects of the agreement that really can be, I think, improved in the implementing legislation process concerning, for example, the unfair trade practice area of antidumping and countervailing duties. We would very much like to work with you and your committee to share some ideas with you about that part of the implementing legislation.

I do believe and hope that the administration will take a strong position regarding the People's Republic of China and its accession to the WTO, and I hope that your committee will urge them to establish the strongest possible criteria in their accession negotiations with the PRC.

I think that when you look at the uncompleted areas related to the Uruguay round, the areas that are still possible for improvement, they really focus on three: Market access, the Chinese acces-



sion criteria, and implementing legislation to deal with problems related to unfair trade practices, primarily.

I don't believe that our industry is asking for that much. We want the opportunity to sell in foreign markets, we want the opportunity to deal with unfair foreign practices, and we would like to make sure that China is not allowed into the community of trading nations until it plays by the rules of those nations, which, as you know, it seldom does.

Nonetheless, in spite of those potential improvements, phasing out the MFA will have a serious impact on U.S. jobs and employment, and therefore our industry has not taken a position on the negotiations at this time. Our final position is going to be influenced ultimately by these three issues that I raised: The outcome of the market access negotiations, the implementing legislation, and by assurances from the administration on how they would treat the PRC and other nonsignatories. Thank you.

[The prepared statement follows:]

**TESTIMONY OF CARLOS MOORE  
AMERICAN TEXTILE MANUFACTURERS INSTITUTE**

Thank you, Mr. Chairman.

Mr. Chairman, members of the Committee, thank you for the opportunity to appear before you today. My name is Carlos Moore and I am Executive Vice President of the American Textile Manufacturers Institute (ATMI) which is the national trade association of the textile mill products industry. Our member companies operate in more than 30 states and account for approximately 80 percent of all textile fibers consumed by mills in the U.S. Our industry produces textile mill products which include yarns, fabrics, household furnishings, automotive and industrial textiles, as well as specialty textiles related to medical and aerospace uses.

I also serve in an advisory capacity to the government as Chairman of the Industry Sector Advisory Committee for Textiles and Apparel (ISAC-15). As required by law, our committee has submitted its report on the Uruguay Round outcome to the Congress. The conclusions concerning the negotiations reached by our committee and the views expressed in that report are consistent with the comments that I offer below.

Mr. Chairman, I testified before your Subcommittee in January, 1992 on the Uruguay Round. That testimony described in considerable detail ATMI's trade concerns, nearly all of which remain valid today. One key ongoing trade problem is rapidly growing imports from low-wage countries which engage in a wide array of unfair trade and production practices to promote their exports. Another problem is that many foreign markets, often those of the same major exporters of textiles and apparel, are closed to our and other countries' exports. The Uruguay Round has an impact on both issues and each is discussed below.

Also valid today, are the improvements that we believed were needed in the Uruguay Round proposals, namely:

- A market access agreement which would require effective access to foreign markets as a prerequisite to U.S. quota liberalization;
- A 15-year phaseout of Multifiber Arrangement (MFA) quotas on textiles and apparel;
- U.S. textile and apparel tariffs not being reduced significantly;
- Denying benefits to the PRC and other non-GATT members.

Based on the results of the negotiations to date, ATMI's assessment is that considerable progress has been made on our third and fourth objectives, but not much has changed regarding the MFA phaseout and market access. Our tariffs, on average, were not significantly reduced, although some rates on particularly import-sensitive products such as wool fabrics were cut substantially. On balance, however, Ambassador Kantor and his negotiators held the line and the tariff cuts agreed to were less than those sought by the European Union and others.

Regarding the PRC and other non-GATT members, U.S. negotiators generally avoided cutting U.S. textile and apparel tariffs where non-GATT members were major suppliers. Nonetheless, a bigger question remains unanswered: How restrictive will be the terms for the PRC's admission to the World Trade Organization (WTO)? I will discuss our concerns in more detail later in my testimony, but we want to stress that the PRC is poised to do irreparable harm to the U.S. textile and apparel industry and its workers if it is permitted to join the WTO without major changes in its nonmarket regime and the conditions under which it produces and trades goods. We urge your Committee to seek an answer to this question without delay.

Of the remaining two key issues, the provisions and timing of the MFA phaseout pose a substantial threat to our industry's continued growth and viability.

In my 1992 testimony I cited several studies which showed that during the MFA phaseout nearly one million jobs would be lost in the domestic fiber, textile and apparel industries as imports surged into the U.S. market. The phaseout provisions that cause such damage were not changed in the Final Act, the document which contains the final agreements. Ambassador Kantor testified last week that the Administration would keep the most import-sensitive products under quota control for as long as possible during the "product integration" process of the phaseout. While that is helpful, other provisions of the phaseout will result in textile and apparel imports increasing by about 150 percent over the 10 years.

Market access is the remaining key issue and is still the subject of ongoing negotiations. We are encouraged by Ambassador Kantor's testimony that he is personally committed to gaining increased access for U.S. textiles and apparel in foreign markets between now and the April 15 signing date.

However, much remains to be done if all textile exporting countries are to provide effective market access. A number of countries have offered to open their textile and apparel markets, including Malaysia, Chile, the Czech Republic and the Slovak Republic. However, most of the key exporting countries have not. India, Pakistan, Indonesia, Thailand, the Philippines, Egypt and Turkey are some who have made no offers or inadequate offers to provide effective market access.

Mr. Chairman, for some years the U.S. textile industry has been told that it should quit complaining about imports and do what is needed to compete in world markets. ATMI member companies have been investing heavily to become more competitive and today we are the most productive textile industry in the world. In 1994 we will invest over \$2.2 billion in the latest equipment and facilities to increase even more our productivity and responsiveness to customer needs.

Our position on trade has changed. You were probably surprised when our industry supported NAFTA and worked hard for its enactment. We also support extending NAFTA parity to the countries of the Caribbean and Central America -- a need made even more urgent by the liberalization of MFA quotas for the Far East. We thank you for the leadership you have shown in sponsoring that legislation.

We are deeply committed to developing foreign markets, but when a country like India ships \$2 billion of textiles and apparel to the U.S., then bans the importation of all but \$12 million as it did in 1992, we need the U.S. government to step in. Some may say that we have nothing that will sell in India, that their people are too poor to buy U.S. goods. In fact, the World Bank reports that there are over 100 million Indians with a median income greater than our own. We know that U.S.-made denim, t-shirts, sweatshirts, sheets, towels and a host of other products can sell there.

We strongly urge this Committee and the Congress to advise the Administration that in order to achieve a fair and equitable outcome, reciprocal market openings must be achieved with respect to all of the textile and apparel exporting countries. Further, we strongly recommend that the Committee and Congress advise the Administration that if a country fails to provide effective access on a timely basis that country should be denied entry into the World Trade Organization (WTO) because it has failed to fulfill the obligations needed to achieve a balance of concessions and thereby become a member of the WTO.

The essential concept of the WTO is that there be no "free riders" and that each country must commit to the obligations of the Final Act and the market access document that embody the results of the Uruguay Round. Failure to provide effective market access for textile and apparel trade is essentially the same as if a country decided it would not accept the antidumping or the safeguard provisions of the Final Act. This is a crucial point.



Some may argue that the U.S. does not need to deny WTO membership to countries keeping their textile and apparel markets closed and that the Final Act provides a mechanism for denying some of the benefits of MFA liberalization to such countries. However, we do not believe the mechanism is strong enough to convince many countries that they should remove their own trade barriers. Let me describe what is contained in the Final Act in this regard.

Let's use India as an example because as I indicated earlier, India's market is essentially closed and it has not made an acceptable market opening offer. Should India refuse to provide effective market access, the following procedures would have to be followed unless the U.S. changes its approach:

- The U.S. government would have to wait until Congress passes implementing legislation and the WTO is operating;
- The U.S. would then file a complaint under the WTO's dispute settlement provisions;
- The complaint would then go to a dispute settlement body for a decision;
- If the dispute settlement body finds in favor of the U.S., it would issue a report recommending that the U.S. be allowed to withhold the increased quota growth that India would otherwise receive under the MFA phaseout (India would still get other MFA phaseout benefits such as product integration);
- Should India choose to appeal this decision the report would then go to an Appeals Body which would make a final decision;
- If that Body ruled in favor of the U.S., the decision could not be blocked by India (the converse is also true);
- The U.S. would then be able to withhold **increases** in the growth rate of India's quotas, (but not withhold growth of the quotas), and only after the third year of the ten-year phaseout.

This dispute settlement process could take 16 months. The result will be that India's quota growth rate would stay at 7 percent each year during the phaseout period rather than increase to 8.5 percent and then later to 11 percent annually. India would still see its quota access to the U.S. market double during the phaseout period -- hardly a significant penalty.

However, the worst feature of this drawn out and uncertain process is that at the end of ten years all of the U.S. quotas against India's trade would disappear and India would still be permitted to keep its market completely closed.

Mr. Chairman, I believe you will agree that this creates a tremendous imbalance of rights and obligations with regard to the MFA phaseout and market access. We do not want to have to depend on the mechanism described above as a remedy for India or any other countries' unwillingness to commit to the obligations required of WTO members. A much more effective approach would be to signal now to India and other closed markets that the U.S. will not permit them to be a free rider on this issue.

Some critics of this approach say that our industry hopes that such countries do, in fact, keep their markets closed so that the U.S. can deny quota liberalization by denying WTO membership. Our objective is to develop a strategy to participate globally. There is little doubt that the MFA phaseout will cause the loss of hundreds of thousands of U.S. textile and apparel jobs. We believe these job losses can be lessened to some degree if other countries open their markets. Our reasoning is that:

- We can sell textile products into open markets.
- Countries could increase their trade with each other rather than look to the U.S., the European Union and Japan as their only major market opportunities. We have seen some concrete evidence of this in the Pacific Rim and in South America.
- Unfair trade practices such as dumping and export subsidies which are commonplace among many of the textile exporting countries would become difficult, if not impossible, should those countries be required to open their markets.

### OTHER URUGUAY ROUND ISSUES

Strong U.S. laws against foreign unfair trade practices have been important to the domestic textile and clothing industry and will become even more so as the MFA is phased out. Antidumping and countervailing duty orders are currently in force against a range of textile products, including shop towels, printcloth, rayon and acrylic yarns, as well as most clothing from a number of countries and sweaters from Hong Kong, Korea and Taiwan.

Unfortunately, U.S. trade laws were under attack in the Uruguay Round to such an extent that U.S. negotiating activity focused mainly on maintaining current U.S. statutes, rather than on trying to strengthen GATT rules and disciplines. The result is that U.S. legal remedies against unfairly priced and unfairly subsidized foreign products have been weakened by the Uruguay Round Antidumping Code, Subsidies Code and dispute settlement rules.

The extent of weakening of domestic laws will depend on the legislative language implementing the agreement.

Problem areas that need to be addressed in implementing legislation include termination of antidumping and countervailing duty orders, *de minimis* dumping levels, new requirements for standing, standards of review, subsidy definition and developing country exemptions. Rather than comment on each at this time, we refer the Committee to the Report to the Congress of ISAC-15.

We are also concerned that Section 301 of our trade laws could be limited in its application to goods and services covered by the WTO. It is our understanding that Section 301 will be subject to a decision by a WTO dispute settlement panel before it could be used by the U.S. We urge the Committee to make it clear in the implementing legislation that WTO panel rulings must not establish legal precedence with respect to U.S. law or regulation. We believe Congress must retain its full constitutional authority over U.S. trade and must not surrender that authority to the WTO.

### CONCERNS REGARDING THE WORLD TRADE ORGANIZATION

U.S. negotiators have indicated in testimony and elsewhere that the benefits to the U.S. of a new World Trade Organization are:

- To provide an umbrella organization which implements the GATT Uruguay Round agreements;
- To establish an integrated dispute settlement mechanism available for settling a wide range of international trade disputes;
- To establish an institutional framework for world trade that prohibits "free riders" -- signatories must implement all parts of the WTO to gain membership.

This last objective means that once the WTO is adopted countries which choose not to become a signatory have no WTO rights and, therefore, no rights under the traditional GATT provisions requiring Most Favored Nation (MFN) treatment and prohibiting discrimination. This is a vitally important concept.

We urge the Committee to ensure that the implementing legislation clearly states that non-WTO members will not receive MFN treatment. The legislation should also indicate that an attempt by a country to avoid the obligations and disciplines of the WTO by actions taken between now and its planned mid-1995 implementation will result in the U.S. refusing to treat the country as a WTO signatory. This is especially important in dealing with the market access issue which I raised earlier.

### THE PEOPLE'S REPUBLIC OF CHINA

Several important textile exporting countries are not members of the GATT, but can become WTO members after fulfilling an accession process. As I mentioned earlier, our industry has serious concerns about the terms of accession for these countries, especially the People's Republic of China. We have advised U.S. negotiators that very strict accession terms must be established for the PRC and that the PRC should not be permitted to tie into the MFA phaseout "in progress" should it enter the WTO during the transition period.

The PRC has engaged in a wide range of illegal acts in the conduct of its textile and clothing trade with the U.S. and has shown widespread disregard for U.S. laws. The PRC is also the largest supplier of textiles and clothing to the U.S. and as a government-controlled, nonmarket economy, has done enormous damage to U.S. companies and workers. It is poised to do even more if permitted greater access to the U.S. market without major reforms to its economy, business practices and workers' rights.

We urge the Committee to include in the implementing legislation criteria that define the PRC's accession. That criteria must require major reforms that are consistent with commitments made by President Clinton to members of Congress that the PRC would receive no benefits from the Uruguay Round until it became a WTO member and opened its market to U.S. textiles and clothing. Accession requirements should also include a special safeguard provision which would permit the U.S. to restrict PRC imports of textiles and clothing should they disrupt or threaten to disrupt the U.S. market. Safeguard actions should be permitted on a non-MFN basis without payment of compensation.

### CONCLUSION:

Mr. Chairman, these comments represent our major concerns regarding the Uruguay Round agreement at this time. Our industry believes that the implementing legislation will be of vital importance to addressing many of the issues raised in this report. We are not asking for that much -- the opportunity to gain access to closed markets and to maintain effective trade laws to deal with unfair foreign practices.

Nonetheless, phasing out the MFA will have a serious impact on U.S. jobs and employment. Therefore, our industry is not taking a position on the negotiations at this time, and our final position will be influenced ultimately by the outcome of the market access negotiations between now and April 15, by the extent to which our concerns can be addressed in the implementing legislation and by assurances from the Administration regarding the treatment of non-signatories such as the PRC and other issues.



Chairman GIBBONS. Thank you, Mr. Moore, for your very thorough testimony.

Mr. Martin.

**STATEMENT OF LARRY MARTIN, DIRECTOR, GOVERNMENT RELATIONS, AMERICAN APPAREL MANUFACTURERS ASSOCIATION**

Mr. MARTIN. Thank you, Mr. Chairman. I, too, will abbreviate my written testimony, and I will abbreviate it even further because my friend, Mr. Moore, delivered most of my testimony.

Chairman GIBBONS. I am glad you all are getting along so well. [Laughter.]

Mr. MARTIN. We usually do.

I am Larry Martin, director of government relations for the American Apparel Manufactures Association, which is the central trade association for American manufacturers of clothing. We are responsible for about 70 percent of domestic production.

Our association today has no formal position on the Uruguay round. However, we do have some thoughts on the content of the agreement.

In the first place, the Uruguay round seems to us an example of the U.S. Government providing a benefit on one hand and then taking it away with the other. Just 2½ months ago, Congress approved the North American Free Trade Agreement, giving special treatment to Mexico for apparel. Now the administration has agreed to a Uruguay round agreement that will open our borders to expanded imports from the large low-wage countries in the world. This certainly will reduce the benefit the United States and Mexico will receive under NAFTA.

This, we believe, is another reason why it is so vitally important for Congress at the earliest possible date to extend the treatment Mexico receives for apparel under NAFTA to the countries of the Caribbean Basin Initiative. Again, we strongly support your initiative in this area and we hope Congress will get to it at a very early date.

It was apparent from the onset of the Uruguay round negotiations in 1986 that the United States was willing to end the apparel and textile restraint system in exchange for perceived concessions by other countries on other products or issues.

AAMA, as others, concentrated our efforts in three areas. We insisted that tariff reductions on apparel should not take place or be minimal. We argued for the longest possible phaseout period for the quotas under the multifiber arrangement, at least 15 years. And we insisted that the trade liberalization provided by the Uruguay round should be denied countries which fail to open their own markets.

The market access package which still is on the table provides a level of tariff reduction on apparel that we can accept, but we earnestly hope that our negotiators do not expand that package between now and the time the agreement is signed on April 15.

On the other two subjects, the results, in our view, are less acceptable. Quotas in place on the date the Uruguay round becomes effective will remain in force during the phaseout. However, the timetable for the phaseout covers only 10 years and many items

will be integrated into GATT well before that. The text largely leaves the order of product integration up to the importing country.

This administration has repeatedly stated that it plans to integrate products less threatened by imports early and save the most import-sensitive products to last. In principle, we agree with that position, and we think the implementing legislation should require it or encourage it, at least.

In addition to integration, there is a provision called growth-on-growth, which provides for accelerated quota growth during the phaseout period. Thus, under this agreement, fully 51 percent of our market will be decontrolled in the eighth year after the onset of the round, and the growth rates arrived at during bilateral negotiations will be nearly doubled on the products remaining under control.

On market access, the administration rightfully argued that other countries should reduce their tariffs to the maximum 35 percent on apparel and agree to remove their nontariff barriers to trade. These actions were to be accomplished over a 10-year period. Thus, a country with a prohibitive 100 percent tariff on apparel would have 10 years to reduce that tariff to 35 percent—still much higher than our tariff rates.

AAMA believes that countries with prohibitive tariffs should bring them down at a much faster pace. We also suggest that the quota growth in integration should be denied countries which fail to come forward with satisfactory market opening offers.

The final document offers up as a penalty only the loss of the growth-on-growth provision for countries which fail to open their markets, and that can be obtained only after a lengthy and successful appeal through the dispute settlement process of the new World Trade Organization.

The failure to achieve real market access in apparel would, in our view, be a major failure of the round. American apparel manufacturers are anxious to open export markets. We firmly believe that many of the millions of people in countries which export apparel would buy American brand name garments if they were available to them.

Yet, the Uruguay round apparel and textile text provides no real incentive for India to open up. Under the agreement, they are guaranteed the whole cake of our market within 10 years or sooner. Failure to open their market possibly could cost them only the icing of the growth-on-growth provision.

In summary, Mr. Chairman, AAMA now has no formal position on the Uruguay round, and we probably will not take a position until after the market access negotiations are complete or until the implementing legislation is drafted. We do, however, have serious concerns with many provisions in the text, and we hope that we will have the opportunity to work with the administration and with this subcommittee for improvements in the implementing legislation wherever possible.

Thank you very much.

[The prepared statement follows:]

TESTIMONY OF LARRY MARTIN  
AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Thank you, Mr. Chairman. I am Larry Martin, Director of Government Relations for the American Apparel Manufacturers Association.

AAMA is the central trade association for American manufacturers of clothing, responsible for about 70 percent of domestic production. Our industry employs about one million workers, produces every type of garment and is located in every state. While virtually all of our members manufacture domestically, many also operate in Mexico, Central America or the Caribbean and some import from other parts of the world.

Our Association today has no formal position on the Uruguay Round. Our Board of Directors will address the subject at its next meeting on February 10. It may or may not take a position at that time.

This lack of a current position, however, does not preclude us commenting on the content of the agreement.

In the first place, the Uruguay Round agreement seems to us a classic example of the United States Government providing a benefit with one hand and then taking it away with the other. Just two and a half months ago, Congress approved the North American Free Trade Agreement, giving special treatment to Mexico for apparel, among other things. NAFTA represented an opportunity for American apparel manufacturers to share some of their production, lower their overall costs, maintain domestic employment and compete with the Far East which already has a major share of our apparel market. It also provided the prospect of accelerated economic development for Mexico.

Now the Administration has agreed to -- and this Committee and Congress soon will be asked to approve -- a Uruguay Round agreement that will open our borders to expanded imports from every low-wage country in the world. This certainly will reduce the benefit Mexico will receive under NAFTA.

Fortunately, it will be several years before the full effect of the Uruguay Round apparel agreement is felt. Hopefully, in the interim, American companies with production in Mexico can consolidate their positions, enabling them to retain their shares of the market.

This is another reason why it is so important for Congress, at the earliest possible date, to extend the treatment Mexico receives for apparel under NAFTA to the countries of the Caribbean Basin Initiative. We supported NAFTA, but we were very concerned because NAFTA would put apparel production in the Caribbean and Central America at a serious disadvantage. We already are seeing evidence of this with CBI investment being postponed and customers demanding the same price reduction on goods from the CBI that they are receiving on goods from Mexico. We have three times as many members with facilities in the CBI as there are in Mexico and they already are feeling the heat of Mexican competition.

It has long been an accepted principal in the United States and throughout the world that trade in apparel and textiles was a sensitive issue and deserved special treatment. Accordingly, the United States has employed some form of comprehensive quota system on imports of apparel and textiles since 1961. Voluntary restraints on the part of other countries have existed 1937.

However, it was apparent from the onset of the Uruguay Round negotiations in 1986, that the United States was willing, even anxious, to end the apparel and textile restraint system in exchange for perceived concessions by other countries on other products and issues.

With that background, AAMA concentrated its efforts in three areas: It insisted that tariff reductions on apparel should not take place or be minimal. It argued for the longest possible phase-out period for the quotas under the Multifiber Arrangement, at least 15 years. And it insisted that the trade liberalization provided by the Uruguay Round should be denied countries which fail to open their own markets.

Though we would prefer to have maintained all our duties, the market access package which still is on the table provides an average eight percent tariff reduction on apparel. We can accept that level of reduction, but we earnestly hope that our negotiators do not expand that package between now and the time the agreement is signed on April 15.



On the other two subjects, the results are much less acceptable. Quotas in place on the date the Uruguay Round becomes effective will remain in force during the phase-out. However, the timetable for the phase-out covers only 10 years and many items will be integrated into the General Agreement on Trade and Tariffs well before that. Under the agreement, 16 percent of items must lose their quota protection on the first day. Another 17 percent will be integrated in the fourth year and another 18 percent will be integrated in the eighth year.

The text largely leaves the order of product integration up to the importing country. This Administration has repeatedly stated that it plans to integrate products less threatened by imports early and save the most import-sensitive to last. In principle, we agree with that position and we think the implementing legislation should require it.

In addition to integration, there is a provision called growth on growth which provides accelerated quota growth. Under this a quota with a normal six percent growth rate will be accelerated by 16 percent on day one, 25 percent in the fourth year and 27 percent in the eighth year. The successive yearly growth rates then become 6.96 percent, 8.7 percent and 11.1 percent.

Thus, fully 51 percent of our market will be decontrolled in the eighth year after the onset of the round and the growth rates arrived at during bilateral negotiations will be nearly doubled on the products remaining under control.

On market access, the Administration argued that other countries should reduce their tariffs to a maximum 35 percent on apparel and agree to remove their non-tariff barriers to trade. These actions were to be accomplished over a 10-year period. Thus, a country with a prohibitive 100 percent tariff on apparel would have 10 years to reduce that tariff to 35 percent, still much higher than our tariff rates.

AAMA argued that countries with prohibitive tariffs should bring them down at a much faster pace. We also suggested that quota growth and integration should be denied countries which fail to come forward with satisfactory market opening offers.

However, the final document offers up as a penalty only the loss of the growth-on-growth provision. And that only after a lengthy and successful appeal through the dispute settlement process of the new World Trade Organization. It might be added that the dispute settlement process is stacked against developed countries because of the balance of membership in GATT.

We have examined the market access offers provided to date and find them largely unsatisfactory. Some major apparel exporters such as India and Pakistan have failed to come forward with any offer.

The failure to achieve real market access in apparel is a major failure of the round. American apparel manufacturers are anxious to open export markets in places they are denied. India, for instance, sent us \$800 million worth of apparel last year and accepted none. India has 100 million people with incomes higher than the U.S. median income. We firmly believe that many of those 100 million people would buy American brand name apparel if it were available to them.

Yet the Uruguay Round apparel and textile text provides no real incentive for India to open up. Under the agreement they are guaranteed the whole cake of our market within 10 years or sooner. Failure to open their market possibly would cost them only the icing of the growth-on-growth provision.

It should be pointed out that several apparel exporting countries are not members of GATT and, therefore, not eligible for the liberalization provided by the Uruguay Round apparel and textile text. Foremost among these is China, the single largest exporter of garments to the United States. We have urged the Administration to very carefully negotiate accession terms for China when it seeks to become a member of the World Trade Organization.

In addition to the apparel and textile text, we have concerns in several other areas of the Uruguay Round document.

The antidumping text requires compensating duties to end in five years unless the domestic industry can show that their revocation is "likely to lead to renewed dumping or injury." Current U.S. law leaves an antidumping order in place unless the exporter can show the opposite.

In addition, the text sets 2 percent as a de minimis dumping margin, compared to the current U.S. de minimis figure of 0.5 percent. In an industry with very small profit margins such as ours, that difference is considerable and sales may be won or lost on the basis of a few cents a garment.

The subsidies code also is of concern because of the "green light" it gives to certain kinds of subsidies. Under the code, subsidies for environmental improvement, research and development, and regional assistance are not actionable. We submit these three provisions constitute a major loophole which will be exploited in some countries to gain export advantages.

In summary, Mr. Chairman, AAMA now has no formal position on the Uruguay Round and we may not take a position until after the market access negotiations are complete or until the implementing legislation is drafted. We do, however, have serious concerns with many provisions in the text and we hope that we will have the opportunity to work with the Administration and with this Subcommittee for improvements in the implementing legislation wherever possible.

Thank you very much.

Chairman GIBBONS. Thank you, Mr. Martin. We appreciate it. Mr. Gundersheim.

**STATEMENT OF ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT AND DIRECTOR, INTERNATIONAL AFFAIRS, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO**

Mr. GUNDERSHEIM. Well, Mr. Chairman, I am Art Gundersheim, and I am here to speak for the members of the Amalgamated Clothing and Textile Workers Union, and I guess I must say that we are not here with any great glee.

Chairman GIBBONS. Well, I anticipated that.

Mr. GUNDERSHEIM. The euphoria that has greeted this agreement in it being the greatest thing since sliced bread, I must say sort of off the top of my head that it is a little bit like white bread, a whole lot of air and not a heck of a lot of nutrition, because I think that this agreement frankly does not carry with it all of the great benefits that have been touted.

In any case, we feel that the debate on this trade agreement and working with the Committee on the implementing legislation will afford us an opportunity to deal with some of the problems potentially that have not been dealt with in this agreement or in past trade agreements in an international basis, and that we might finally be able to introduce human and social concerns into the international discourse on trade, but I will elaborate about that in a minute.

The problem is that our members in particular feel a little betrayed by this agreement. We actually thought the MFA worked fairly effectively, not as effectively as we would like in certain administrations, but the fact is that it did two things. It provided orderly domestic transition and an opportunity for almost all developing countries to share in the economic growth of this industry.

On phaseout of the MFA—first of all, I agree with Mr. Moore and the ATMI—I think it will result in at least 1 million jobs, if not more, being lost in our sector alone.

Second, we feel, quite frankly, that the other losers are most of the rest of the Third World, and our union has been very interested in how development takes place and encourage development and economic growth. We feel the consequence of removal of MFA quotas will result, in effect, in an oligopolization of world trade in textiles.

You are going to get China, Vietnam—because I assume the restrictions will be lifted fairly quickly—Pakistan, India, Bangladesh. A handful of countries basically will take 80 or 85 percent of world trade, and everybody else will lose out.

I mean, I do not know if my retail and importer colleagues here will mention it, but at least our contacts want relationships over many years and say they all prefer to source in the Far East in a very few countries and have no interest, frankly, in Latin America, Eastern Europe, Turkey, Africa, or wherever. They would prefer the concentration that I think will result and has already shown to be true in all the other light industries where particularly China has decided to come in. They come in. They price undercut every other developing country, and you end up with 75, 80, 85 per-



cent of the market in all of the sectors where there are no initial restraints on trade.

Now, a lot of discussion has been made about how expensive the MFA has been to our economy and so on, and, frankly, I was quite impressed by the study that was just released by the Institute for International Economics a couple of weeks ago by Hufbauer and Elliott. What was astounding about that study, quite frankly, is what it showed of how little the cost was; that in fact the net welfare cost to our economy was \$11 billion which is less than  $\frac{2}{10}$  of 1 per cent; and the tradeoff in terms of preserving jobs, in terms of preserving social standards, labor standards, and other important domestic economic concerns seems to me an extraordinary little price to pay. In fact, if you change some of their reemployment effects, I think the net welfare cost is positive, not negative.

Let me point out, we are still running \$100-billion-plus trade deficit, despite all of the openness of trade and so on, and we keep talking about how great the export market will be. My colleagues in the industry keep talking about that, but I have never seen studies that show the job effects of all these excessive imports relative to exports. I am sure if you did a job analysis, the job loss would far outweigh the job gain in the same way that the dollar figures are remarkably negative in balance.

Second, the good part of all these exports are exports of supplies or parts or inputs to manufacturing industries or contractors, who at one time were located in the United States and now are located elsewhere, and in fact no net jobs have been created. So it is an artificial number.

The most important thing we were concerned about is the very virtue that everybody talks about; that the effects of a free market system of increased competition is that it will drive down consumer prices. The real benefit is ultimately to our economy that in economic terms there is a net benefit to the economy through the lowered consumer prices.

Nobody ever talks about what happens to labor markets, and the very same economic principles hold there, nor by removing various trade barriers and creating a totally open system, a de facto world labor market. By this increased foreign competition, it will in fact drive down the price of U.S. workers in exactly the same way you drive down consumer prices; that in fact what will happen is a "rationalization," as the economists talk about it, in terms of work and wage conditions and then an overwhelming pressure created to move to the lowest common denominator of wages and conditions of work, and I defy anybody to refute that.

It has been absolutely true. I think there is almost a one-for-one correlation with the decline in real incomes of American workers over the last 20 years and the corresponding increase in imports at the same time. Obviously, there are other factors, but it is pretty close.

Let me cite one other important factor. We have casually talked about, well, we should not have low-skilled or low-education kinds of jobs in the United States; that the high labor-intensive industries really belong elsewhere. Well, our members are not quite convinced that they are going to find jobs in high-tech industries. They do not see where they are going to get the education or the other

resources of our government to assure them of moving into other sectors.

Particularly in the high-tech question, I was struck by the fact that just recently there was an article that talked about the difficulty the rocket and space industry faced in the United States. The figures show that it cost \$12,000 per pound of payload to put a satellite in orbit by U.S. rocket, \$8,000 per pound using a French rocket, and only \$4,000 per pound using Chinese or Russian rockets. Now, you certainly do not need a Cray computer to figure out what the consequence of that will be. I do not see, frankly, where all these great jobs are going to be created in our industrial economy.

Let me get to the real question and dilemma and what ought to be addressed in the implementing legislation. One is that, obviously in the same way that we found that there have to be restraints on the unfettered power of free market and the abuses that it creates, it has to be negotiated internationally as it has been done in the United States, as it has been done in Europe and Canada and the rest of the developed world.

When President Franklin Roosevelt signed the Fair Labor Standards Act in 1937, what he was really talking about was the consequence of the trade between States. What he said is that goods produced under conditions that do not meet a rudimentary standard of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate commerce. That philosophy basically has been American consensus for the last 50-plus years, and the same principle ought to hold internationally, and we see zero commitment to that, we see zero attempt to negotiate it, and we see zero attempt to even deal with the market abuses that we found even prior to the labor and human abuses that we have found.

There are no antimonopoly provisions. There are no restraint of trade provisions; none of the things in the Sherman antitrust areas that we thought did at least something to restrain the power of people who have the opportunity to take advantage. None of that is negotiated internationally. We just do not understand that the entire experience of our industrialization over the last 150 years is sort of thrown out the window, to say let us go back to 1860, that is a perfectly fine world we are going to live in.

So that is why we really want to urge this committee, Congress itself, to impose some reasonable conditions dealing with human, social, and environmental standards. That ought to be a condition of trade. It is not a crazy idea; it is not a novel idea. We already impose it to some degree. We do not allow products produced by slave labor or other forced labor in. That has already been legislated.

We restrain U.S. companies from using corrupt practices to gain market share, and we refuse to allow them to participate in the air boycott of Israel. We refuse to allow products in that steal intellectual property from American companies. All we are saying is let us extend the same principle because, quite frankly, child labor is just as onerous as slave labor, and having 20-hour workdays for less than subsistence wages, frankly, is a hell of a lot worse crime than is bribery.



We seriously want to develop a system where the benefits of trade and the wealth created by trade go to the people who produce that trade, and I am not talking about the companies. I am talking about the workers.

So, therefore, we would ask: One, that the committee insist that workers' rights be added to the GATT agenda with a specific timetable and with specific standards—and part of that is that the already-accepted ILO standards, which are Government-, business-, and labor-accepted conventions, be made a specific part of the GATT process—that, second, bad violations of ILO standards be a basis for exclusion of products into international commerce; third, while we have already started having a code of conduct for multinational corporations, that it should be expanded.

In fact, if companies violate local labor, health and safety, and environmental laws in the countries in which they operate, they, therefore, should thereby be forbidden entry into the international community of trade or at least face some sort of penalty to serve as an incentive to at least adhere to the local conditions, meager as they are in many countries.

Some companies have already adopted codes of conduct such as I have already mentioned, and I append to my testimony the very good code that Levi Strauss company has adopted, frankly what Julia worked on with them very carefully, and I think it is to be commended not just to other companies to adopt it, but, quite frankly, it ought to be legislated. I see absolutely no reason why it should not.

Finally, as the Chairman mentioned, there is a potential for other trade actions to be appended to this implementing bill. Obviously, we are interested in the extension of GSP, but an extension of GSP whereby the labor rights criteria is strengthened, where countries are not let off the hook for simple political reasons, and in fact, quite frankly, we would like to see the President's discretion reduced, so that if one faces a country like South Africa with apartheid or Burma with a totally unconscionable government that there be an automaticity to losing their GSP rights instead of having to go through a hearing process.

Obviously, our position on the Chairman's favorite of CBI parity has not changed, and particularly the freeloading part of it where they are not obligated to take any obligations, such as Mexico at least has done in their agreements.

Finally, all of this would be great if there were a concomitant faith that something would be done about a domestic economy in terms of creating good jobs and expanding economy, and I know what the last quarter's figures are, but, in essence, our members feel they are being forced to pay twice. They lose their jobs through trade, and virtually nothing is being done for them.

Training programs uniformly have been a failure. The safety nets have been reduced very dramatically, and in fact they suffer all of the economic consequences with no help from the Congress, from the executive branch, and in any other way. There are no meaningful transition programs, no assistance given whatsoever.

You are going to now add to that the potential of 3 million people on welfare that are going to be forced into the job market. Certainly, everybody ought to have a job. In fact, the trade union



movement has worked very strongly toward that end. We would like to see the Congress and executive come to a real commitment to do something about the jobs instead of getting it thrown down a rathole as it was so quickly the few months after the President took office when he proposed his initial stimulus program.

Rightfully, the Nation ran to help those people who were harmed in the earthquake in California. We saw the terrible floods in the Midwest, the hurricanes in Florida, and so on, and we have an enormous outpouring of compassion and help, Federal assistance in the billions of dollars.

What about the members who work in the textile and apparel industry? They get nothing, quite frankly, because they simply suffer in quiet and lonely desperation because there is no physical thing that a TV camera can focus on, except occasionally. There is nothing starkly visible when they lose their house and when they sink into a mire of having to stand in a food stamp line.

I think if this committee is going to do anything, it ought to urge the entire Ways and Means Committee and entire Congress to pass with the implementing legislation a truly stimulative economic package and jobs program such that people who are displaced have some hope, have some opportunity, and some ability to see a future instead of just grimness.

Thank you.

[The prepared statement and attachments follow:]

## STATEMENT OF

THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO  
JACK SHEINKMAN, PRESIDENT

PRESENTED

BY

ARTHUR GUNDERSHEIM  
ASSISTANT TO THE PRESIDENT & DIRECTOR, INTERNATIONAL AFFAIRS

ON

THE URUGUAY ROUND  
GATT AGREEMENT

TO THE SUBCOMMITTEE ON TRADE,  
HOUSE WAYS AND MEANS COMMITTEE

FEBRUARY 2, 1994

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Chairman Gibbons and Members of the Subcommittee:

I am Art Gundersheim, Assistant to the President and Director of International Affairs of ACTWU.

The Amalgamated Clothing and Textile Workers Union represents some 240,000 workers, most making fibers, textile fabrics and home furnishings, all types of apparel and footwear. In addition, we have significant numbers of members who make photocopying machines, auto parts, various plastic products and other durable goods.

We appear here today with mixed feelings. While this GATT agreement is not the best trade agreement the US could have negotiated, we see it as an opportunity to introduce human and social concerns into the international discourse on trade. Trade is not an end in itself, but rather a vehicle that will hopefully -- but not necessarily -- lead to greater shared prosperity, higher living standards and an overall improvement in the human condition. Our union believes it is long overdue that the body and agreements that govern international exchange of goods and services address the moral and human goals we make coequal to, if not even more important, to the goal of maximizing market efficiency and enhancing productivity.

Our members in the textile and apparel industry feel particularly betrayed by this agreement. The Multifiber Arrangement (MFA) allowed an orderly domestic transition and the opportunity for most of the developing nations to share in our market. Phase out of the MFA will result in at least a million lost jobs with a bogus or minimal reduction in consumer prices as supposed compensation. To all those fancy econometricians who predict lower unemployment we simply ask what has happened to all the other non-durable sectors in our economy? At most domestic manufacturing supplies only 15% to 30% of our market.

We feel further betrayed because the Punta del Este Declaration stated MFA phase-out would only occur under conditions of strengthened unfair trade laws and real market access everywhere. Neither of these latter conditions were met. Subsidy opportunities and dumping abuses were expanded, not contracted. The equally important unfair trade practices (most government mandated) of lax or non-existent environmental and work standards were again ignored. Market access for American exports were only obtained from those countries who were already

opening up for their own internal economic reasons. Not one country was forced into significant increased access in textiles and apparel due to these negotiations!

What is equally disturbing is that most of the third world will lose their export development opportunities as a result of MFA phase-out. Only 4 or 5 countries -- China, Pakistan, Bangladesh, India and maybe Indonesia and Thailand, will come to oligopolize the market, taking 75, 80, maybe 85% of all imports into our market. "Greater" China which includes the mainland, Hong Kong, Macau and Taiwan already supplies one-third of our total apparel imports. It is common knowledge that essentially all Hong Kong and Taiwan production really takes place on the mainland, while Macau's industry is already 100% mainland workers.

Much nonsense has been stated about how costly the MFA quotas are to our economy. But the study just released a few weeks ago by the Institute for International Economics stated the total net welfare cost to our economy of all quotas, tariffs, VRA's, dumping cases, etc. in all sectors is just \$11 billion, or less than .2 of 1% of our Gross Domestic Product. This is so terrible?! And if you revise some of their assumptions on reemployment based on reality, the net welfare effect is positive, not negative.

And for all those economic experts who argue that greater exports is the answer to ending the stagnation in our economy we ask, what about Japan? It is not an oversimplification to note that while last year that country had the highest post-war trade surplus of any nation it also swung deeper into recession.

As the US continues to run \$100 billion plus trade deficits we would love to see economic analysts do a study of the net job gain or loss as a consequence of a more open trading system. All we hear about is the 20,000 jobs created by each \$1 billion of exports. But we never hear about the 25,000 jobs lost due to each \$1 billion of imports. (Imports generally come in at a lower unit price for the equivalent item exported.) Further never mentioned is that these exports are frequently supplies or inputs for manufacturing that was previously located here and thus result in no new job created.

But then theory in the trade area has frequently been more propaganda than explanations of reality. Everyone cites Adam Smith as the patron saint of free markets, but never once mentioning that he also advocated establishing strong trade unions and other checks to prevent abuse of market power.

Similarly, constantly cited is how expanded trade and greater foreign competition will drive down consumer prices. The exact same logic drives labor markets, but that is conveniently ignored. By removing trade barriers a defacto world labor market is created and this intensified foreign competition will drive down the "price" of US workers -- which is to say wages, benefits and working conditions. An open world trading system does not necessarily lead to a more "rational" exchange of comparative advantage (usually government determined anyway) but rather to an overwhelming pressure to move to the lowest common denominator of workers wages and conditions of work.

Then we are told to forget the low skilled or semi-skilled, labor intensive industries as being "inappropriate" for our advanced economy. Future job creation will be in the high-tech,



high knowledge sectors in our economy. Unfortunately this view has little relationship to the reality we face today.

First there is no assurance "high-tech" production will remain in the US. Our rocket and space industry is the very model of where future employment is to come. But what happens when it costs \$12,000 per pound of payload to put objects in orbit by US rockets, \$8,000 per pound using French rockets, and only \$4,000 per pound using Chinese or Russian rockets? You don't need a Cray computer to figure it out.

The only way the US or other high wage economies can maintain these levels is through monopoly powers or some other control of the world market. Other countries are catching up quickly in many sophisticated areas of production or service and there is no reason to expect that other workers will be exempt from the same pressures that affect our members in the unglamorous rag business.

Secondly where will the millions of new immigrants, the 20-25% of our citizens who are functionally illiterate, the millions who aren't rocket scientists find work? Shouldn't entry level jobs continue to exist here; or jobs whereby a person's major contribution is physical rather than mental? Policy makers better figure out a job market quick as we lose basic manufacturing jobs by the millions. Otherwise the number of people here who have no opportunity or see no stake in the system for themselves will mushroom enormously. It is no coincidence that crime and drug use increase enormously as jobs and income potential decrease equally strongly.

The only solution reasonably available to address these problems and dilemmas at the moment is through the implementing legislation you are beginning to consider. Our organization would like to work with this Subcommittee and the Trade Representative's office to offer some specific ideas for this legislation and what results from future trade negotiations. As we anticipate you will give the President continuing negotiating authority there is need to remember the words of President Franklin Roosevelt when he signed the Fair Labor Standards Act in 1937, where mandatory minimum labor standards and prohibition of child labor was enacted nationally: "Goods produced under conditions which do not meet a rudimentary standard of decency should be regarded as contraband and ought not to be allowed to, pollute the channels of interstate commerce." ¹

President Roosevelt and Congress were seeking to prevent states from using working conditions as a means of cut throat competition, which had resulted in a downward spiral of expanded poverty, murderous physical conditions in work places and no hope of expanding a consumer based economy. What was true then domestically is equally true today internationally. It is time we stopped rewarding companies or countries who use degraded human conditions as a means to gain profit and market share.

This is not exactly a novel idea. Congress has already set certain moral terms on trade. We ban any imported products made by slave or other forced labor. We restrain US companies from using bribes or in acquiescence with the Arab boycott of doing business with Israel as legitimate trade practices. We exclude products which result from stolen intellectual property rights.

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¹. As cited in "Time for a Global New Deal" by Collingsworth, Gould and Harvey. Foreign Affairs. Jan/Feb 1994.

What we seek is a simple extension of these principles to set minimum standards of human decency for workers. Child labor is just as onerous as slave labor. Requiring 20 hour work days for less than subsistence wages is a worse crime than engaging in bribery.

The old saw that "poverty is the greatest barrier to trade" is even more true today than previously. As formal barriers come down all that remains is naked aggression against workers as the main means of competition.

Minimum work standards and enforceable labor rights are not back door protectionism but front door means to raise living standards everywhere. Such principles have worked reasonably well in our domestic free market system over the last half-century, producing widespread prosperity. Just as the GATT seeks to move the world more toward a free market system in economic terms, it should do so in more just social and human terms!

ACTWU asks that this Subcommittee require the President to seek a work program and institutional structures in the GATT to include worker rights and minimum work standards as part of the rules of trade. There should be an integration of the internationally accepted Conventions of the International Labor Organization (ILO) into the GATT process. Time limits for conclusion of these negotiations should be included just as Congress has done in prior extensions of negotiating authority.

We should expand our prohibition on slave labor products to those produced in violation of ILO standards.

Just as we now set certain codes of conduct for multinational corporations, we should expand them to include any violation of local labor, health and safety or environmental laws as a basis for denying entry or setting forth some sort of punishment.

In fact a handful of American companies have already set forth a code of conduct for sourcing and selecting business partners abroad. We have worked with the Levi Strauss company in determining their criteria. Their standards are appended to our testimony. More than commending it to all multinational corporations, we urge Congress to enact such a set of principles to apply to all firms engaged in cross-national commerce.

As there is a strong possibility that extension of GSP will be included in this implementing package our union advocates a strengthening of the worker rights criteria to retain eligibility. In addition there has to be a major reduction in the President's discretion on whether a country retains its benefits so that the abuse of sheer political manipulation is removed.

We would urge that a permanent monitoring of worker and human rights be set up in the Labor Department, with yearly reports, so that action can be taken quickly as abuses become known.

Since Section 301 actions can still be taken for labor rights violations, we would urge Congress to set forth a specific list of remedies and countervailing trade actions that would be GATT legal so as to retain the effectiveness of this statute.

Finally, we want a true effort by Congress to stimulate a full employment economy. Right now our members pay twice for the

dislocations produced by expanded trade. First they lose their jobs and except for a few, their health care and pensions. Then they lose again when no meaningful transition program is available to them. The trade adjustment program, all the various retraining programs, have been major failures. Our safety net of income maintenance and support services has been reduced to unconscionably low levels. Studies have shown that fully one half of unemployed apparel workers never find another job and another one quarter only find new jobs at lower wages. This is a disgrace.

Add to this competition the new effort to force some 3 million welfare recipients into the job market, either directly or through government subsidy. Where will all these new jobs be created and how will we get workers into them?

Congress seems to be in no mood to appropriate the necessary billions of dollars for such major job creation or a needed economic stimulus package.

What happened to us being a nation of compassion? We rightfully rush to extend Federal resources to quake victims in California, flood victims in the Midwest and hurricane victims in the Southeast. But we do nothing for the hundreds of thousands of victims of government trade policy who suffer in quiet, lonely desperation, hidden from view because there is no physical cause to make it starkly visible.

This Administration has begun to talk about a program to handle the restructuring that is occurring in our economy. But the dimensions of resources and effort being considered are far too meager.

As this Subcommittee considers this GATT agreement, it should demand of the entire Ways and Means Committee create a simultaneous program of economic expansion, job creation and transition services to the millions who suffer through no fault of their own.

Voters in the last election sought these commitments and thus far their expectations are unfulfilled. The consequences of expanded international trade now are too intimately tied to our domestic economy to be handled as separate and unique areas of action. Our union awaits the opportunity to help fulfill what the majority of the electorate has every right to expect.

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# Levi Strauss & Co.

## has a heritage of conducting business

*in a manner that reflects its values. As we expand our sourcing base to more diverse cultures and countries, we must take special care in selecting business partners and countries whose practices are not incompatible with our values. Otherwise, our sourcing decisions have the potential of undermining this heritage, damaging the image of our brands and threatening our commercial success.*

### BUSINESS PARTNER TERMS OF ENGAGEMENT

Our concerns include the practices of individual business partners as well as the political and social issues in those countries where we might consider sourcing.

This defines Terms of Engagement which addresses issues that are substantially controllable by our individual business partners.

We have defined business partners as contractors and suppliers who provide labor and/or material (including fabric, sundries, chemicals and/or stones) utilized in the manufacture and finishing of our products.

#### 1. ENVIRONMENTAL REQUIREMENTS

We will only do business with partners who share our commitment to the environment. (Note: We intend this standard to be consistent with the approved language of Levi Strauss & Co.'s Environmental Action Group.)

#### 2. ETHICAL STANDARDS

We will seek to identify and utilize business partners who aspire as individuals and in the conduct of their business to a set of ethical standards not incompatible with our own.

#### 3. HEALTH & SAFETY

We will only utilize business partners who provide workers with a safe and healthy work environment. Business partners who provide residential facilities for their workers must provide safe and healthy facilities.

#### 4. LEGAL REQUIREMENTS

We expect our business partners to be law abiding as individuals and to comply with legal requirements relevant to the conduct of their business.

#### 5. EMPLOYMENT PRACTICES:

We will only do business with partners whose workers are in all cases present voluntarily, not put at risk of physical harm, fairly compensated, allowed the right of free association and not exploited in any way. In addition, the following specific guidelines will be followed.

#### • WAGES AND BENEFITS

We will only do business with partners who

provide wages and benefits that comply with any applicable law or match the prevailing local manufacturing or finishing industry practices. We will also favor business partners who share our commitment to contribute to the betterment of community conditions.

#### • WORKING HOURS

While permitting flexibility in scheduling, we will identify prevailing local work hours and seek business partners who do not exceed them except for appropriately compensated overtime. While we favor partners who utilize less than sixty-hour work weeks, we will not use contractors who, on a regularly scheduled basis, require in excess of a sixty-hour week. Employees should be allowed one day off in seven days.

#### • CHILD LABOR

Use of child labor is not permissible. "Child" is defined as less than 14 years of age or younger than the compulsory age to be in school. We will not utilize partners who use child labor in any of their facilities. We support the development of legitimate workplace apprenticeship programs for the educational benefit of younger people.

#### • PRISON LABOR/FORCED LABOR

We will not knowingly utilize prison or forced labor in contracting or subcontracting relationships in the manufacture of our products. We will not knowingly utilize or purchase materials from a business partner utilizing prison or forced labor.

#### • DISCRIMINATION

While we recognize and respect cultural differences, we believe that workers should be employed on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs. We will favor business partners who share this value.

#### • DISCIPLINARY PRACTICES

We will not utilize business partners who use corporal punishment or other forms of mental or physical coercion.

## GUIDELINES FOR COUNTRY SELECTION

The following country selection criteria address issues which we believe are beyond the ability of the individual business partner to control.

### 1. BRAND IMAGE

We will not initiate or renew contractual relationships in countries where sourcing would have an adverse effect on our global brand image.

### 2. HEALTH & SAFETY

We will not initiate or renew contractual relationships in locations where there is evidence that Company employees or representatives would be exposed to unreasonable risk.

### 3. HUMAN RIGHTS

We should not initiate or renew contractual relationships in countries where there are pervasive violations of basic human rights.

### 4. LEGAL REQUIREMENTS

We will not initiate or renew contractual relationships in countries where the legal environment creates unreasonable risk to our trademarks or to other important commercial interests or seriously impedes our ability to implement these guidelines.

### 5. POLITICAL OR SOCIAL STABILITY

We will not initiate or renew contractual relationships in countries where political or social turmoil unreasonably threatens our commercial interests.



**LEVI STRAUSS & CO.**

**BUSINESS PARTNER**

**TERMS OF ENGAGEMENT**

**AND GUIDELINES FOR**

**COUNTRY SELECTION**



Chairman GIBBONS. Thank you, Mr. Gundersheim.  
Ms. Hughes.

**STATEMENT OF JULIA K. HUGHES, CHAIRMAN, U.S. ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL, AND DIVISIONAL VICE PRESIDENT, GOVERNMENT RELATIONS, ASSOCIATED MERCHANDISING CORP.**

Ms. HUGHES. Thank you.

Good afternoon. My name is Julia Hughes, and I am testifying today as chairman of the U.S. Association of Importers of Textiles and Apparel. I had the privilege of testifying before this Committee on November 3 of last year, and at that time we were urging the successful conclusion of the Uruguay round. Now, today, we want to offer some of our suggestions regarding the implementing legislation.

Before I proceed, though, with the details of my testimony, I do just want to insert in the record our congratulations to all the negotiators who worked so hard these past 7 years and, of course, to the Chairman and to the committee for your hard work in passing fast track and in supporting the administration in these negotiations.

USA-ITA is a national association of more than 150 American importers, importer-manufacturers, retailers of apparel, and related service companies. Our members source apparel domestically and overseas, accounting for over \$40 billion in U.S. sales annually and employing more than 1 million American workers. The apparel import and retail industries as a whole account for over 3 million jobs, more than twice the number in the traditional textile and apparel manufacturing sectors combined. Thus, we constitute a significant sector in this industry.

I do not plan today to dwell on the extent of protection accorded the U.S. textile and apparel manufacturers over the past. Gary Hufbauer and Kimberly Elliott recently characterized this in their study, and I am really glad that Art and I are quoting from the same study this time, but they called textile and apparel protection the "Mount Everest of protection," accounting for some \$24 billion or more than 30 percent of the projected consumer gains which would occur if all U.S. trade barriers were eliminated. This is remarkable, given that textile and apparel products account for only 6 percent of U.S. total imports. I am also not going to dwell on the fact that it will take many years before the distortions created by quota rents, largely held by the foreign exporters, will be eliminated, nor the fact that even in a situation where all U.S. border measures were eliminated for textiles and apparel, Hufbauer and Elliott estimate that some 82.5 percent of U.S. apparel job opportunities would remain and 97.3 percent of the textile industry job opportunities would remain.

I think it is important to keep these facts in mind as the implementing legislation is debated and crafted. Our members want to move forward, but we also want to ensure that the Textile and Apparel provisions of the Uruguay round legislation are written in a transparent and commercially meaningful manner. We have an agreement that, while not perfect, at last provides a roadmap for integrating textiles and apparel trade into the world trade dis-



ciplines. We need to make sure that the benefits of that integration begin to be felt during the 10-year transition, not just at the end.

The agreement reached on December 15 of last year folds the textiles and apparel sector into the trading system progressively in the following way. Quotas in force on the date of signature will be phased out in 3 stages over a 10-year transition period. Importing countries have the right to determine which products will be covered at each stage of the transition, but the agreement does call for the integration to be meaningful during the transition. At the same time, each of those products which remain restricted will have import growth rates which will have extra growth, the growth-on-growth concept, based on the growth in their current MFA bilateral agreements. Tariffs are required to be phased down over the 10-year period, and a special transitional safeguard will be available, and special provisions for dispute settlement.

So, at the end of the 10-year transition, the textile and apparel sector will be protected by tariffs only, although still among the highest tariffs in the manufacturing sector. In addition, the textile and apparel sector will have recourse to the normal article XIX safeguard provisions of the Final Act, the WTO dispute settlement mechanism, and normal trade remedies actions such as antidumping and countervailing duty actions.

We want to just highlight those points that we support. USA-ITA strongly supports the termination of quotas on textiles and apparel at the end of the 10-year transition period.

Second, we believe it is very important that the decisions for each phase of the integration should be made at the beginning of the 10-year transition, not as each phase falls due. This would mean that our industry would know the composition of each tranche of integration from the outset and could make the necessary commercial decisions and investment decisions and adjustments for the life of the transition. All of the industry, and I would say most importantly the workers in the textile and apparel industry, would be faced with certainty, not the uncertainty that has plagued this transition mechanism for the past 30 years.

Third, USA-ITA supports the growth provisions, but does not support a cut in future growth or the use of quota growth as a mechanism to punish textile-exporting nations for concerns relating to other areas of the agreement.

Fourth, we are concerned to ensure that a transparent process is established which would allow full consultation with all segments of the industry in decisions the administration must make.

The issue of transparency and fair public hearings is critical. Until now, decisions to regulate textiles and apparel have been made in closed rooms. There is no public notice of these meetings and no minutes of these meetings. There is no opportunity for public comment before a decision is made.

The industry is beginning the transition toward integrating textiles and apparel into the normal trade procedures, and in 10 years, there will no longer be special rules for textiles. We believe it is important to begin now to move the decisionmaking process into the sunshine.

I guess, I wish Mr. Nader was here now because we have a point of agreement on that, too.

Specifically, we have a couple of recommendations. We want a public process established under the Administrative Procedures Act for trade policy decisionmaking on the selection of which textile and apparel items will be integrated into the GATT at each phase of the integration. This public process should include requirements for economic analysis by the International Trade Commission as an independent body and should allow opportunities for all interested parties to make submissions, attend hearings, and provide advice.

Similarly, trade policy decisions concerning the use of the transitional safeguard should be subject to public process and consultation with all interested parties, perhaps following a mechanism similar to that under section 201.

Trade policy decisions on exercising the dispute settlement provisions of the agreement or the broader dispute settlement provisions of the Final Act or in cases where action has been taken against the United States should also be subject to full consultation and public process. Moreover, our industry does not want to become the unwitting victim of cross-sectoral retaliation and would expect to be fully consulted if such a situation arises.

USA-ITA is in the process of drafting a position paper on how such a public process might be structured, and we will forward it to the committee shortly.

We also believe that the structure of the private sector industry and trade policy advisory process should be revised to take into account the fact that textiles and apparel will be fully integrated into the GATT. The internal U.S. procedures should be changed to ensure that textile and apparel trade policymaking is reintegrated into the broader U.S. trade policy framework. This would avoid duplication within the government and would better reflect the nature of the Final Act, and we would be glad to work with the committee and, of course, the administration to craft an advisory process for the transition.

Mr. Chairman, in closing, I want to reiterate our full support for the liberalization of textile and apparel trade and the reintegration of this sector into the GATT. We believe that it will be healthy for our industry, for the economy, and especially for our constituents, the consumers. We accept that a period of adjustment is necessary, but we do not want this adjustment period to result in the unproductive wrangles we have had in the past, both internally and abroad. That is why we want to ensure that the transition process is transparent and fair. In that way, industry can turn its attention and resources to bringing apparel to the American consumer at the best price and quality.

Thank you for the opportunity to testify.

[The prepared statement follows:]

TESTIMONY OF JULIA K. HUGHES  
CHAIRMAN OF  
UNITED STATES ASSOCIATION  
OF IMPORTERS OF TEXTILES AND APPAREL  
ON THE FINAL ACT OF THE URUGUAY ROUND

February 2, 1994

Good afternoon. My name is Julia K. Hughes. I am the Divisional Vice President, Government Relations for the Associated Merchandising Corporation. Today, however, I am testifying in my capacity as Chairman of the United States Association of Importers of Textile and Apparel (USA-ITA). Mr. Chairman, I had the privilege of testifying before this Committee on November 3 of last year. Then, however, we were urging the successful conclusion of the Uruguay Round of Multilateral Trade Negotiations. Now we are examining the Final Act of that Agreement.

Before I proceed with the details of my testimony, Mr. Chairman, I would like to congratulate all our negotiators who worked so very hard on this agreement for the past seven years. I would also like to congratulate the Chairman and the Committee for passing fast track and for consistently supporting the Administration in these negotiations.

The USA-ITA is a national organization of more than 150 American importers, importer-manufacturers, and retailers of apparel and related services companies. Our members source apparel domestically and abroad, accounting for over \$40 billion



in U.S. sales annually and employing more than 1 million American workers. The apparel import and retail industries as a whole account for over 3 million jobs, more than twice the number in the traditional textile and apparel manufacturing sectors combined. Thus, we constitute a significant part of the industry.

I do not plan today to dwell on the extent of protection accorded the U.S. textile and apparel manufacturers over the years. Gary Hufbauer and Kimberly Elliott recently characterized this as the "Mt. Everest of protection" accounting for some \$24 billion, or more than 30% of the projected consumer gains of \$70 billion which would occur if all U.S. trade barriers in all sectors of the economy were eliminated. This is remarkable, given that textile and apparel products account for only 6% of total U.S. imports. Nor do I plan to dwell on the fact that it will take many years before the distortions created by "quota rents" (largely held by foreign exporters), which resulted from U.S. textile and apparel restraints, will be eliminated. Nor the fact that even in a situation where all U.S. border measures were eliminated on textiles and apparel, some 82.5% of U.S. apparel job opportunities would remain as would some 97.3% of domestic textile jobs opportunities.

However, it is important to keep these facts in mind as implementing legislation is debated and crafted. Our members do want to move forward. But we also want to ensure that the Textile and Apparel provisions of the Uruguay Round's implementing

legislation are implemented in a transparent and commercially meaningful manner for our industry. We have an agreement that, while not perfect, at last provides a road-map for integrating textiles and apparel trade into world trade disciplines. We need to make sure that the benefits of that integration begin to be felt during the 10 year transition -- not just at the end.

The agreement reached on December 15 of last year folds the textile and apparel sector into the world trading system progressively (and that is an agreed and key word) in the following way.

- ° Quotas on textiles and apparel in force on the date of signature of the Final Act will be phased out in three stages over the 10 year transition period. The first stage begins on the date of implementation of the agreement, with the requirement that 16% of the total volume of 1990 covered imports be integrated into the world trading system. Thereafter, covered products are integrated in tranches of 17% after the first 3 years, and 18% after the second 4 year period, with full integration at the end of 10 years. Importing countries have the right to determine which products will be covered by each stage of the transition, though the agreement does call for the integration to be meaningful during the transition.

- ° At the same time, each of those products which remain restricted during each phase of the transition have import quota growth amounts which were established in MFA bilateral agreements increased by 16%, 25% and 27% respectively.
- ° Tariffs are required to be phased down -- but nowhere near out -- over the 10 year period.
- ° A special transitional safeguard is also available for use during the transition as a further cushion. In addition, special provisions for dispute settlement are included through the offices of the Textile Monitoring Body (TMB) which is to be established by the Council for Trade in Goods.

Thus, at the end of the transition the textile and apparel sector will remain protected by tariffs alone (albeit still very high in comparison to the manufacturing average). In addition, the textile and apparel sector will, of course, have recourse to the Article XIX safeguards provisions of the Final Act, the WTO Dispute Settlement mechanism and normal trade remedies actions such as antidumping and countervailing duty action.

Looking at some of these in turn:

- ° USA-ITA strongly supports the termination of quotas on textiles and apparel at the end of a 10 year transition period;



- ° Importantly, we want the decisions for each phase of the integration to be made at the beginning of the 10 year transition, not as each phase falls due. This would mean that our industry would know the composition of each tranche from the outset and could make the necessary commercial decisions and adjustments for the life of the transition. This way all of the industry, and importantly the workers in the textile industry, would be faced with certainty, not the uncertainty that has plagued textile and apparel trade to date.
- ° USA-ITA supports the growth provisions but does not support a cut in future growth or the use of quota growth as a mechanism to punish textile exporting nations for concerns relating to other areas of the agreement;
- ° We are concerned to ensure that a transparent process is established which would allow full consultation with all segments of the industry in decisions the Administration must make in matters of trade policy resulting from the Textiles and Clothing Agreement.

The issue of transparency and fair public hearings is critical. Until now decisions to regulate textiles and apparel trade have been made in closed rooms. There is no public notice of the meetings and no minutes of those meetings. There is no opportunity for public comment before a decision is made.

The industry is beginning the transition toward integrating textiles and apparel into the usual trade procedures and in ten years there will no longer be special rules for textiles. We believe it is important to begin now to move the decision-making process into the sunshine.

Specifically:

We want a public process established under the Administrative Procedures Act (APA) for trade policy decision-making on the selection of those textile and apparel items which will be integrated into the GATT at each phase of the integration. This public process should include requirements for economic analyses by the International Trade Commission (ITC) as an independent body, and opportunities for all interested parties to make submissions, attend hearings and provide advice.

Similarly, trade policy decisions concerning the use of the transitional safeguard should be subject to public process and consultation with all interested parties such as those provided in Section 201 of the Trade Act of 1974 as amended. However, we would want the "market disruption" standard written into U.S. law, thus increasing transparency and helping to ensure that trade dislocations were minimized.

Trade policy decisions on exercising the Dispute Settlement provisions of the Textiles and Clothing Agreement, the broader Dispute Settlement provisions of the Final Act, or in cases where such action has been taken against the United States should also be subject to full consultation and public process. Moreover, our industry does not want to become the unwitting victim of cross-sectoral retaliation and would expect to be fully consulted should such a situation arise.

USA-ITA is in the process of drafting a position paper on how such a public process might be structured and we will forward it to the Committee shortly.

USA-ITA also believes that the structure of the public sector industry and trade policy advisory process should be revised to take into account the fact that textiles and apparel will be fully integrated into the GATT. Thus internal U.S. procedures should be changed to ensure that textile and apparel trade policy making is reintegrated into the much broader U.S. Trade Policy framework. This would avoid duplication within Government and would better reflect the nature of the Final Act. We would be glad to work with the Committee and with the Administration to craft an advisory process for the transition.

Mr. Chairman, in closing, I would like to reiterate our full support for the liberalization of textile and apparel trade, and the reintegration of this sector into the GATT. We believe that



it will be healthy for our industry, for our economy and especially for consumers. We accept that a period of adjustment is necessary, but we do not want this adjustment period to result in the unproductive wrangles we have had in the past both internally and abroad. That is why we want to ensure that the transition process is transparent and fair. In that way industry can turn its attention and resources to bringing apparel to the American consumer at the very best price and quality.

Thank you.

Chairman GIBBONS. Thank you, Ms. Hughes.  
Mr. Hall.

**STATEMENT OF ROBERT HALL, VICE PRESIDENT AND  
GOVERNMENT AFFAIRS COUNSEL, NATIONAL RETAIL  
FEDERATION**

Mr. HALL. Thank you, Mr. Chairman.

Good afternoon. I am Robert Hall, vice president and government affairs counsel at the National Retail Federation, which is the Nation's oldest and largest retail trade association speaking for the industry. I thank you and the committee for this opportunity to testify on behalf of the Federation and the Nation's retailers.

The National Retail Federation represents the entire spectrum of retailing, including the Nation's leading department, chain, discount, specialty, and independent stores, several dozen national retail associations, and all 50 State retail associations. Our membership includes an industry that encompasses over 1.3 million retail establishments, employs nearly 20 million people, or 1 in 5 working Americans, and registered sales last year in excess of \$1.9 trillion.

The Nation's retailers and American consumers support the Uruguay round agreement and urge Congress to approve the agreement and to pass its implementing legislation. For the past 7 years, U.S. trade negotiators have shouldered the arduous task of reaching this agreement. Although it is not perfect, this accord deserves the support of Congress and the American people.

The Uruguay round agreement contains many benefits for American consumers and provides for the expansion of international trade opportunities: By committing to reduce agricultural subsidies and other price support systems that cost taxpayers and consumers billions of dollars annually; by ending more than 50 years of special protection from textile and apparel imports; by reducing or even eliminating tariffs on a broad range of products important to American consumers, including toys, furniture, beer, certain footwear, clothing, and ceramics; and by winning some concessions from developing countries to open their service markets, including their retail sectors, to U.S. investors. In opening stores abroad, U.S. retailers can play an increasingly important role as distributors of American-made manufactured goods.

This afternoon, I would like to focus on what we see as the most positive provision of the Uruguay round agreement to American consumers, and that is the gradual phaseout of quotas and the reduction of tariffs on American imports of textiles and apparel. Although meant to be temporary when established in 1936 in the Japan case, quotas on textile and apparel imports have steadily grown in both product scope and country coverage ever since. In addition to quotas, the United States imposes some of its highest tariffs on imports of textile and apparel, with some wool tariffs reaching 34 percent.

These quotas and tariffs place a heavy financial burden on American consumers and force consumers to pay an additional \$46 billion a year for textile and apparel products. This hidden tax amounts to more than \$700 per year for a family of four. Most significantly, this tax weighs heaviest on the low-income consumers who spend 13 percent of their incomes on textile and apparel prod-

ucts, which is more than twice what wealthier Americans spend annually. These high tariffs and quotas amount to American taxpayers and consumers subsidizing textile and apparel industry jobs at a price tag of \$270,000 per year annually, far higher than the average wage in the industry.

The Uruguay round agreement, if implemented, will phase out these textile and apparel quotas over 10 years. Further, as a part of this agreement, the United States has agreed to reduce its textile and apparel tariffs an average of 11.6 percent over 10 years. While the Nation's retailers and consumers would have liked to have seen further tariff cuts, we are pleased with the progress made so far, and we continue to work with and support the administration in their efforts to reach agreements on further tariff cuts and improved market access in India, Pakistan, Indonesia, Thailand, and other countries.

With the implementation of the Uruguay round agreement, the United States and her trading partners will usher in a new day in textile and apparel trade policy. We will see the beginning of the end of years of inflationary, costly protectionism, and we will see the application of rules for trade in these sectors match those applicable to all other important sectors of our economy. To ensure the full enactment of the Uruguay round agreement, the Nation's retailers urge Congress and the administration to draft clear implementing legislation that will guarantee that American consumers will reap the benefits of this new day in textile and apparel trade policy.

We urge the following: First, a reaffirmation of the integration of the textile and apparel trade into the GATT after 10 years, providing American companies with every opportunity to expand trade opportunities. The purpose of the phaseout of the quotas is to move textile and apparel trade provisions back into the disciplines of the GATT. Therefore, the procedures developed by Congress for implementing this agreement should provide for every opportunity to ensure that this goal is met on schedule. If the implementing legislation fails to reflect the intent of the Uruguay round agreement, the textile and apparel industry would not be ready to compete with imports in the new world order at the end of the 10-year phasein period.

Second, we urge the development of procedures for implementing the Uruguay round agreement's integration provisions that give the utmost significance, primacy, to maintaining transparency and due process. Every opportunity must be provided for any interested party to submit advice to the administration as it considers which products to integrate into the GATT trading system. Further interested parties should also be permitted to submit advice when the administration is evaluating claims of serious damage in the transitional safeguard investigations. We believe that the information used to evaluate serious damage in the transitional safeguard procedure must be both objective and verifiable. Decisions and the substantiating reasons should be published with sufficient notice provided of all changes with opportunities for official comment from all impacted industries. Textile and apparel trade must not be given preferential treatment compared to other sectors.



Third, we urge the application of the Uruguay round's provisions to all U.S. trading partners on a nondiscriminatory basis.

Mr. Chairman, the Nation's retailers look forward to working with you and Members of Congress to ensure that the Uruguay round agreement will prove beneficial to American consumers. As retailers, we support provisions that will ensure that the implementation legislation includes processes that promote the expansion of trade, provide transparency, embody due process, and adhere to nondiscriminatory principles.

It is a new day in textile and apparel trade, and on behalf of the Nation's retailers and American consumers, I ask that, as you begin your deliberations on this important legislation, you remember that all Americans stand to benefit from an implementation process that is clear, open, and accessible.

Thank you.

[The prepared statement follows:]

**STATEMENT OF ROBERT HALL  
VICE PRESIDENT, GOVERNMENT AFFAIRS COUNSEL  
NATIONAL RETAIL FEDERATION**

Good morning. I am Robert Hall, Vice President, Government Affairs Counsel, at the National Retail Federation, the nation's oldest and largest trade association which speaks for the retail industry. I thank the Committee for allowing me this opportunity to testify on behalf of the Federation and the nation's retailers.

The National Retail Federation represents the entire spectrum of retailing, including the nation's leading department, chain, discount, specialty and independent stores, several dozen nation retail associations and all 50 state retail associations. Our membership represents an industry that encompasses over 1.3 million retail establishments, employs nearly 20 million people --or 1 in 5 working Americans-- and registered sales in excess of \$1.9 trillion last year.

The nation's retailers and American consumers support the Uruguay Round agreement and urge Congress to approve the agreement and to pass its implementing legislation. For the past seven years, U.S. trade negotiators have shouldered the arduous task of reaching this agreement. Although not perfect, this accord deserves the support of Congress and the American people.

The Uruguay Round agreement contains many benefits for American consumers and provides for the expansion of international trading opportunities by:

- * committing to reduce agricultural subsidies and other price support systems that cost taxpayers and consumers billions of dollars annually;**
- * ending more than 50 years of special protection from textile and apparel imports;**
- * reducing or even eliminating tariffs on a broad range of products important to American consumers, including toys, furniture, beer, certain footwear, clothing and ceramics; and,**
- * winning some concessions from developing countries to open their service markets, including their retail sectors, to U.S. investors.** In opening stores abroad, U.S. retailers can play an increasingly important role as distributors of American-made manufactured goods

As you can see, the benefits to America's consumers are many. This morning I would like to focus on perhaps the most positive provision of the Uruguay Round agreement to American consumers: the gradual phase-out of quotas and the reduction of tariffs on U.S. imports of textiles and apparel. Meant to be temporary when first applied to imports from Japan in 1936, quotas on textile and apparel imports have steadily grown in product scope and country coverage ever since. In addition to quotas, the United States imposes some of its highest tariffs on imports of textile and apparel, with some wool tariffs as high as 34 percent. Protectionist, inflationary tariffs are not a new idea either as many have been in place since our nation's inception.

These quotas and tariffs place a heavy financial burden on American consumers. Tariff and quota protections have forced consumers to pay an additional \$46 billion a year for textile and apparel products. This hidden "tax" amounts to more than \$700 per year for a family of four. Most significantly, this tax weighs heaviest on low income consumers who spend 13 percent of their incomes on textile and apparel products, more than twice what wealthier Americans spend annually. These high tariffs and quotas amount to American consumers and taxpayers subsidizing textile and apparel industry jobs at a price tag of \$270,000 per job annually-- far higher than the average wage in the industry.

The Uruguay Round agreement, if implemented, will phase out textile and apparel quotas over ten years. Further, as part of this

agreement, the United States has agreed to reduce its textile and apparel tariffs an average of 11.6 percent over ten years. While the nation's retailers and consumers would have liked to have seen further tariff cuts, we are pleased with the progress made so far and we continue to support the Administration's efforts to reach agreements on further tariff cuts and improved market access with a number of other countries, particularly India, Pakistan, Indonesia and Thailand.

With the implementation of the Uruguay Round agreement, the United States and her trading partners will usher in a new day in textile and apparel trade policy. We will see the beginning of the end of years of inflationary, costly protectionism and the application of rules for trade in these sectors that match those applicable to all other important sectors of the U.S. economy. To ensure the full enactment of the Uruguay Round agreement, the nation's retailers urge Congress and the Administration to draft clear, principled implementing legislation that will guarantee that American consumers will reap the benefits of the new day in textile and apparel trade policy.

We urge the following:

**1) A reaffirmation of the integration of textile and apparel trade into the GATT after ten years, providing American companies with every opportunity to expand trade.** The purpose of the phase-out of the quotas is to move textile and apparel trade provisions back into the disciplines of the General Agreement on Tariffs and Trade (GATT). Therefore, the procedures developed by Congress for implementing this agreement should provide for every opportunity to ensure that this goal is met on schedule. If the implementing legislation fails to reflect the intent of the Uruguay Round agreement, the U.S. textile and apparel will not be ready to compete with imports in the new world order at the end of the 10 year period.

**2) The development of procedures for implementing the Uruguay Round agreement's integration provisions that give utmost significance to maintaining transparency and due process.** Every opportunity must be provided for any interested party to submit advice to the Administration as it considers which products to integrate into the GATT trading system. Further, interested parties should also be permitted to submit advice when the Administration is evaluating claims of "serious damage" in transitional safeguard investigations. We believe that the information used to evaluate "serious damage" in the transitional safeguard procedure must be both objective and verifiable. Decisions and the substantiating reasons should be published, with sufficient notice provided of all changes with opportunities for official comment from all impacted industries. Textile and apparel trade must not be given preferential treatment compared to other sectors.

**3) The application of the Uruguay Round's provisions to all U.S. trading partners on a non-discriminatory basis.** Our multilateral trading system has realized the benefits of a non-discriminatory trading system to both the U.S. economy and to American consumers. Non-discriminatory treatment ensures that the benefits of trade do not accrue only to small groups of trading partners, breaking the international community into various trading blocs that complicate trade for companies and raise prices for consumers.

Mr. Chairman, the nation's retailers look forward to working with you and other Members of Congress to ensure that the Uruguay Round agreement will prove beneficial to American consumers. As retailers, we support provisions that will ensure that the implementation legislation includes processes that promote the expansion of trade, provide transparency, embody due process, and adhere to non-discriminatory principles.

It is a new day in textile and apparel trade and on behalf of the nation's retailers and American consumers, I ask that as you begin your deliberations on this important legislation you remember that all Americans stand to benefit from an implementation process that is clear, open and accessible.



Chairman GIBBONS. Thank you.

Mr. Payne has expressed an interest in the question that I will ask now. He announced earlier that he had an unavoidable conflict and couldn't be here.

Mr. Moore, would you comment on Ms. Hughes' proposal for integrating textiles at the beginning of the 10-year transition rather than as each phase falls due.

Mr. MOORE. Mr. Chairman, I will be glad to try to react to that because I was sort of struck by it when she mentioned it.

Certainly, there is some certainty needed for businessmen and for workers as to how this integration process will take place, but it seems to me that you are asking the government to be even more wise at the beginning of the process in picking which products to integrate than it would be going through the process. But clearly you have much less knowledge about events that are going to happen 10 years from now than you do about events that would happen immediately or 3 years from now and what the impact of your actions will be.

I think that I certainly wouldn't want to be that government official who has to decide now what products would be integrated throughout the 10 years because I won't know the dynamics of the marketplace or investment. A product that may appear not very sensitive to imports today could be sensitive later and vice versa. But, also, it seems to me it could send a very wrong signal to U.S. producers because it says the government is telling you that way out in the future your products are going to be integrated to the GATT or maybe not so far in the future they are going to be integrated to the GATT.

It is going to create disincentives for investment. It is going to create instabilities among workers, I think, to know that, well, I have only got this job for 7 years and then our production is going to be integrated in the GATT overnight, and the Chinese and the Indians and Pakistanis will all be able to ship goods in here not under quota. I think that while some advanced planning is needed, we should think seriously about whether it makes sense to decide today about something that will happen that far out in the future. There is a lot of research, a lot of development, and a lot of new machinery that can come into play during that time.

I am not sure the retailers would like to be told 10 years in advance that, well, after 3 years you have got to cut your workers' wages by this much, after 4 more years by this much, and after 3 more by this much. I think it might have a bad impact on their work force. They might go looking for other jobs. Now, some people may say that might be good, but I think it is the wrong signal to send based on incomplete knowledge today.

I think a reasonable amount of time is needed to address that issue. Certainly, you wouldn't want to decide on December 31 and announce on January 1 you no longer have any quotas on a certain product, but I also don't think you want to say that 9 years from now you are not going to have any quotas on that product. I think you can do this a lot more reasonably and with a lot more rational thought if you do it 6 months or 1 year in advance, as each stage progresses.

I would like to give it some more thought because this is the first I have heard of that proposal, but I see some real dangers there.

Chairman GIBBONS. Ms. Hughes, would you like to comment?

Ms. HUGHES. Well, we would be glad to speak with my colleague about this and talk a little further. He is right. In our industry, also, there was some concern about the issue of flexibility, but in discussing it, we realize that this is not a sector where you truly have free trade. Now you have trade regulated by the quotas in many ways, and we felt that perhaps it would be better even though we cannot forecast what will happen 5 years from now or 7 years from now to know now what was going to happen at each stage since in 10 years all the quotas are gone. So, if you look back from that, we are talking about two additional decisions to what has to be made for the beginning date of the implementation of the WTO, one 3 years out and one 7 years out, and so perhaps it made sense to alert those workers now instead of waiting 3 years or waiting until their 7 years to tell them, oh, whoops, you are not at the end of this at 10 years, you are actually at the second stage or at the first stage.

Chairman GIBBONS. Mr. Martin.

Mr. MARTIN. If I may add to what Mr. Moore said earlier, the apparel business is in many respects fashion driven, and your successful apparel manufacturer is a person who knows what is going to be popular next spring, not 8 years in the future.

The trade is so volatile that it is almost impossible to predict what is going to happen down the road, and an action taken now that wouldn't take effect until 7 years later may be totally irrelevant at that point.

Chairman GIBBONS. Mr. Gundersheim.

Mr. GUNDERSHEIM. I always enjoy being the odd man out, I guess.

I certainly think that there are certain segments of the industry that have a very crucial role in our economy and that have higher priorities than others, and I think there is nothing wrong with saying that certain segments of that industry ought to enjoy the full 10 years of the quota process and delineating out what those sectors ought to be.

I think our union could give a reasonable accounting of those sectors of the industry and a rationale for why they should be, and I see nothing wrong with having such a priority list as the President has called the most sensitive areas of our economy and give them the longest-term phaseout.

Mr. MOORE. Mr. Chairman, could I just add a point?

Chairman GIBBONS. Sure.

Mr. MOORE. I think that Mr. Martin has hit upon something that is very crucial. If I think back 10 years ago, the product mix that we were producing as a textile industry is tremendously different from the product mix today. We have moved into totally new products, new fabrics that weren't even conceived back then, new yarns, and we develop them all the time.

I just visited one of our member companies who showed me an array of new fabrics for apparel that didn't exist 6 months ago, and how do you pick and choose today something that may not even be there down the road? I think that Ambassador Kantor tried to put



some rationality in all of this saying that, look, as a general rule, things that are very import-sensitive should be integrated last. Products where we have never had a quota, where we don't have import penetration of any degree, where we would never likely have an MFA quota if the MFA would last forever, then, really, there is not going to be an adverse employment impact in this country if you integrate those first. I think that under those kind of general guidelines, you can make some very rational decisions.

Chairman GIBBONS. Life is complex. I thank each of you for coming here. I know what a long-term interest each of you have had in this problem, and we are making some progress. It is slow.

Mr. Gundersheim, perhaps what you have advocated here will make its way into future negotiations. I think it will. It is a matter of time.

Mr. GUNDERSHEIM. Well, I just hope that it is quicker, earlier than later, as the Chairman has said about most other of these agreements.

Chairman GIBBONS. OK. Thank you very much.

Now the Office of the Chemical Industry Trade Advisor, Mr. Gess; the Non-Ferrous Metals Producers Committee, Mr. Romagnoli; and the Distilled Spirits Council, Mr. Meister.

All right. Mr. Gess.

**STATEMENT OF LARRY GESS, DIRECTOR, WORLD TRADE, NALCO CHEMICAL CO., NAPERVILLE, ILL., ON BEHALF OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR**

Mr. GESS. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Larry Gess, and I am the director of world trade at Nalco Chemical Co. in Naperville, Ill. I am here today representing the interests of 2,600 chemical companies across the Nation by virtue of their membership in the trade associations that comprise the coalition called the Office of the Chemical Industry Trade Advisor, or OCITA.

I am here today representing America's No. 1 exporting industry, one that exported over \$45 billion in products in 1993 alone, an industry that has had a positive trade balance for over 60 years since tracking began.

Today we urge our able negotiators in the Office of the U.S. Trade Representative to press the negotiators from Brazil, India, Indonesia, Thailand, Argentina, Venezuela, and Malaysia to fully participate in the Chemical Tariff Harmonization Agreement, after which I will refer to as CTHA. The participation of these essential countries is necessary to assure free and fair trade in chemicals.

In the event that the priority countries do not agree to join the CTHA, we urge that the U.S. Government adjust and balance the U.S. market access offer to reflect their refusal. It is critical that the United States retain some leverage in order to address future trade liberalization initiatives. Our industry is committed to a joint effort with our negotiators to obtain an agreement of these essential countries.

Three months ago, I shared with this subcommittee how we came to make the contribution that is called the Chemical Tariff Harmonization Agreement. The essential elements of the CTHA are: First, the global harmonization of chemical tariffs including zero-for-zero



offers; second, consideration for products deemed import-sensitive; third, elimination of nontariff measures; and, fourth, removal of the "free rider" problem to broad country coverage. Each of these elements is considered basic to a meaningful market access agreement in chemicals.

I am pleased to note that most of our major trading partners quickly embraced the CTHA and subsequently made market access offers consistent with it.

At this point in the negotiation, here is what the U.S. offer for the CTHA includes. The chemical industry will be taking an average 40 percent cut in tariffs, compared to the 33 percent overall U.S. average cut. Second, no products will be deemed import-sensitive. Third, although we did not eliminate all nontariff measures, we did make significant progress in the form of some new disciplines, which brings us to the "free rider" problem.

An essential group of countries, countries with significant chemical production, to date have not signed onto the CTHA. Without these countries, the CTHA and the market access negotiations are reduced to little more than a hollow exercise. With these countries, the Uruguay round will stand as testimony to the progress that can be made in establishing reasonable disciplines in international trade.

Last November, I said that the chemical industry generally supported the draft Final Agreement for the Uruguay round, premised on a reasonable market access component, and we are not backing off of that position. We simply cannot declare victory without the participation of the essential countries in the CTHA.

Why is full country coverage so important to our industry? Why do we insist that Brazil, India, and the others agree to CTHA? First, the economies of the essential countries are growing at a faster rate than our industry's larger, more mature markets. Simply put, these markets represent the future to the U.S. chemical industry.

Second, broader country coverage will help solve the traditional "free rider" problem that has plagued the GATT. "Free riders" take advantage of low U.S. tariffs to export their products to the United States. They keep their own tariffs high against American products, and that is a textbook example of unfair trade.

Third, failure to achieve full CTHA participation sets a bad precedent for other potential "free riders," such as Russia, China, and Taiwan. Chemical output in these "free rider" countries is already large and growing every year. Each of them produced more than \$2.5 billion of chemicals a year; in total, more than \$40.5 billion together. India alone has nearly \$16 billion in chemical production and Brazil another \$13 billion. Yet, these industries are effectively shielded from competition due to their high tariffs that they impose on chemical imports from the United States and other CTHA participants.

Broader country coverage will enhance the value of the other Uruguay round agreements. One of our priorities in the round was improved disciplines on intellectual property protection, and our negotiations worked hard to produce an excellent TRIPs agreement. However, the benefits of improved intellectual property pro-

tection are diminished if high tariffs bar market access for our products.

The tools to encourage additional participation in the CTHA are already there to be used by our negotiations. The negotiations and the U.S. offer expressly provide for balancing adjustments. The U.S. Government should consider withdrawing offers to retain negotiating leverage toward those countries who do not themselves participate. USTR should also use the leverage in other preference programs, such as the General System of Preferences, to promote participation in the CTHA. The chemical industry tends to be aggressive in using mechanisms such as section 301 and section 337. We expect the U.S. Government to be as aggressive in maintaining its leverage through the use of every available negotiating tool.

It is our hope that the essential countries recognize that improved access by U.S. manufacturers will help lower the price of manufactured and consumer goods in those countries. The CTHA will help promote technology transfer. It will help us deliver products to be used in new processes, equipment, and pollution control technologies. Used in that way, the CTHA can, therefore, promote the sustainable development that will be so important in the future.

In my testimony last November, I called the Uruguay round the engine that we need to pull us out of the international economic quagmire, and I still believe that, Mr. Chairman, but we have to be careful that we don't cut the power to that engine and lock up the steering, too, by failing to get the broadest possible country coverage in chemical tariff harmonization.

Mr. Chairman, that concludes my prepared statement, and I thank the committee for allowing me to testify. I do have a number of attachments that I would like to include as part of the record.

[The prepared statement and attachments follow:]

TESTIMONY OF LARRY GESS  
ON BEHALF OF THE  
OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR (OCITA)

BEFORE THE SUBCOMMITTEE ON TRADE  
COMMITTEE ON WAYS AND MEANS  
UNITED STATES HOUSE OF REPRESENTATIVES  
February 2, 1994

Good afternoon, Mr. Chairman, and members of the Subcommittee. My name is Larry Gess, and I am the Director of World Trade for Nalco Chemical Company, in Naperville, Illinois.

I am here today representing the interests of 2,600 chemical companies across the nation.

I am here today representing America's number one exporting industry -- one that exported over \$45 billion of products in 1993 alone. An industry that has had a positive trade balance for over 60 years since tracking began.

An industry whose economic performance has gone largely unnoticed, and in fact has been taken largely for granted.

Today we urge all countries participating in the market access negotiations of the Uruguay Round to accede to the Chemical Tariff Harmonization Agreement (CTHA). We urge our able negotiators in the office of the United States Trade Representative (USTR), to press the negotiators from Brazil, India, Indonesia, Thailand, Argentina, Venezuela, and Malaysia, to fully participate in the CTHA. These countries should accept the promise that participation in the CTHA will produce free and fair trade in chemicals.

In the event that the priority CTHA countries do not agree, we urge the U.S. government to adjust and balance the U.S. market access offer to reflect their refusal. It is critical that the United States retain some leverage in order to address future trade liberalization initiatives. Our industry is committed to a joint effort with our negotiators to obtain the agreement of these essential countries.

Three months ago I shared with the Subcommittee how we came to make the singular contribution that is the CTHA. Working with the chemical industries of Canada, Europe, Japan and Australia, we developed a framework agreement for tariff harmonization. Our agreement was accepted by the members of the Office of the Chemical Trade Advisor (OCITA), a coalition made up of the Chemical Manufacturers Association (CMA), the National Agricultural Chemicals Association (NACA), the Society of the Plastics Industry (SPI), the Synthetic Organic Chemical Manufacturers Association (SOCMA), the Fertilizer Institute (TFI), the National Paint and Coatings Association (NPCA) and the Chemical Specialties Manufacturers Association (CSMA).

The essential elements of the CTHA are the global harmonization of chemical tariffs, including zero-for-zero tariff offers, removal of the "free-rider" problem, consideration for import sensitive products, and elimination of non-tariff measures. Each of these elements is basic to a meaningful chemicals market access package.

I am pleased to note that most of our major trading partners quickly embraced the CTHA, and subsequently made market access offers consistent with the CTHA.

At this point in the negotiation, here is what the negotiators achieved. We will be taking an average 40 percent cut in tariffs -- compared to the 33 percent overall U.S. average cut. No products will be treated as import sensitive. Although we did not eliminate all non-tariff measures, we did make progress. Which brings us to the "free-rider" problem.

An essential group of countries -- countries with significant chemical production -- to date have not signed on to the CTHA. Without these countries, the CTHA and the market access negotiations are reduced to little more than a hollow exercise. With these countries, the Uruguay Round will stand as testimony to the progress that can be made in establishing reasonable disciplines in international trade.

Last November I said that the chemical industry generally supported the draft final agreement for the Uruguay Round, premised on a reasonable market access component. We are not backing off that position.



The bottom line is that without the participation of the essential countries in the CTHA, we simply cannot declare victory. We will continue to promote the CTHA with negotiators both here and abroad. We will be more vigorous in pursuing our remedies against fundamentally unfair trade practices. And we will seek to rethink other preferences, such as GSP duty treatment, for those countries who continue to impose unilaterally high tariffs on our products.

Why is full country coverage so important to our industry? Why do we insist that Brazil, India, and the others agree to the CTHA?

First, the economies of the essential countries are growing at a faster rate than our industry's more mature markets. Simply put, these markets represent the future of the U.S. chemical industry.

Second, broader country coverage will help solve the traditional "free-rider" problem that has plagued the GATT. "Free-riders" take advantage of low U.S. tariffs to export to the U.S., but keep their own tariffs high. That's a textbook example of unfair trade.

Chemical output in these "free-rider" countries is already large, and growing every year. Each of them produce more than \$2.5 billion in chemicals a year; more than \$40.5 billion together. India alone has nearly \$16 billion in chemical production, and Brazil another \$13 billion. Yet these industries are effectively shielded from competition due to the high tariffs they impose on chemical imports.

Broader country coverage will enhance the value of the other Uruguay Round agreements. One of our priorities in the Round was improved disciplines on intellectual property protection. And our negotiators worked hard to produce an excellent TRIPs agreement. However, the benefits of improved intellectual property protection are diminished if high tariffs bar entry to our products.

The tools to encourage additional country coverage in the CTHA are already there to be used by our negotiators. The negotiations, and the U.S. offer, expressly provide for "balancing adjustments" in tariff offers. The U.S. government should consider withdrawing offers to retain negotiating leverage toward those countries who do not themselves participate, or using other available options. USTR should use the leverage in other preference programs -- such as the Generalized System of Preferences -- to promote participation in the CTHA. Sections 301 and 337 still remain powerful tools to convince other countries of the value of free and fair trade -- and the U.S. government should not hesitate to use them. We in industry intend to be aggressive in using these tools; we expect the U.S. government to also be aggressive in maintaining its negotiating leverage through the use of these mechanisms.

There is an important reason why the "free-riders" should sign on to the CTHA. Improved access by U.S. manufacturers will help lower the price of manufactured and consumer goods in those countries. The CTHA will help promote technology transfer. It will deliver new processes, equipment and pollution control technologies where they are needed most. This type of trade is the essence of the sustainable development policy that this Administration so strongly promotes.

The success of future international trade negotiations depends in large part on how successful we are in obtaining a satisfactory market access result in the Uruguay Round. Our goal is to seek competitively equivalent export opportunities for U.S. companies, through full country participation in the CTHA. Other U.S. industrial sectors cannot now achieve effective market access because their tariff leverage has been completely eliminated in other negotiations. In pursuing full participation in the CTHA, the chemical industry seeks to avoid the same fate.

Last November I called the Uruguay Round the engine we need to pull us out of the international economic quagmire. I still believe that, Mr. Chairman. But we have to be careful that we don't cut the power to that engine -- and lock up the steering -- by failing to get the broadest possible country coverage in chemical tariff harmonization.

Mr. Chairman, that concludes my prepared statement. I ask that my statement, and a number of attachments detailing the level of the U.S. industry's trade with the target CTHA countries be included as part of the record. I will be happy to respond to any questions the members might have.

## JANUARY 1994

Harmonize tariffs to 5.5%-6.5% but binding varies. Uses 1989 bound/applied rates as basis.

Eliminations on 14 specific products, most of Chapter 33 and 34; Nothing in Chapters 31 or 37.

No products deemed import sensitive by the United States

### Reduction of Non-Tariff Measures subject to implementation and enforcement of new disciplines

Acceptable participation by 21 countries;  
Expect participation in 3 countries;  
8 countries are not harmonized;

Austria  
Canada  
EC (12 Countries)  
Finland  
Japan  
Korea  
Singapore  
Sweden  
Switzerland  
United States of America

Australia  
New Zealand  
Norway

Argentina  
Brazil  
India  
Indonesia  
Malaysia  
Mexico  
Thailand  
Venezuela

- Austria
- Canada
- EC (12 Countries)
- Finland
- Japan
- Korea (Some exceptions)
- Singapore
- Sweden
- Switzerland
- United States of America

Expect participation  
Expect participation  
Expect participation

[illegible]

**Top U.S. EXPORTERS Ranked by Industry:**

1993 YEAR TOTAL thru: November					
Commodity Grouping	Exports	Imports	Trade Balance	Exports + Imports	% Of Total Trade
1. CHEMICALS:	\$41,339.1	\$26,683.9	\$14,655.2	\$68,023.0	7.1%
2. AGRICULTURE:	\$37,790.9	\$21,649.2	\$16,141.7	\$59,440.1	6.2%
3. ELECTRICAL MACHINERY:	\$33,564.3	\$42,617.0	(\$9,052.7)	\$76,181.3	8.0%
4. CARS/TRUCKS/PARTS:	\$32,755.6	\$72,627.3	(\$39,871.7)	\$105,382.9	11.0%
5. AIRPLANES/PARTS:	\$27,426.2	\$5,636.6	\$21,789.6	\$33,062.8	3.5%
6. ADP EQUIPMENT:	\$24,316.2	\$37,996.4	(\$13,680.2)	\$62,312.6	6.5%
7. GEN. INDUST. MACHINERY:	\$17,903.7	\$15,615.2	\$2,288.5	\$33,518.9	3.5%
8. POWER GENERAT'G MACH.:	\$17,497.6	\$15,617.4	\$1,880.2	\$33,115.0	3.5%
9. SPECIAL IND. MACHINERY	\$16,071.3	\$12,295.0	\$3,776.3	\$28,366.3	3.0%
10. SCIENTIFIC INSTRUMENTS:	\$13,916.1	\$7,675.5	\$6,240.6	\$21,591.6	2.3%
11. TELECOMMUNICATIONS :	\$11,806.8	\$24,978.2	(\$13,171.4)	\$36,785.0	3.9%
12. MINERAL FUELS:	\$8,817.6	\$51,707.5	(\$42,889.9)	\$60,525.1	6.3%
13. IRON/STEEL/METALS n.e.s:	\$8,552.5	\$15,176.4	(\$6,623.9)	\$23,728.9	2.5%
14. PAPER/PAPERBOARD:	\$5,920.0	\$7,973.9	(\$2,053.9)	\$13,893.9	1.5%
15. TEXTILES:	\$5,415.3	\$7,750.1	(\$2,334.8)	\$13,165.4	1.4%
16. CORK/WOOD/LUMBER:	\$5,321.5	\$5,060.2	\$261.3	\$10,381.7	1.1%
17. RECORDS/MAG. MEDIA:	\$4,813.1	\$3,161.7	\$1,651.4	\$7,974.8	0.8%
18. CLOTHING:	\$4,447.4	\$31,490.2	(\$27,042.8)	\$35,937.6	3.8%
19. TOYS/GAMES:	\$2,474.1	\$10,842.3	(\$8,368.2)	\$13,316.4	1.4%
20. FOOTWEAR:	\$554.5	\$7,750.1	(\$7,195.6)	\$8,304.6	0.9%
SELECT GROUP TOTAL:	\$320,703.8	\$424,304.1	(\$103,600.3)	\$745,007.9	78.0%
TOTAL MERCHANDISE TRADE:	\$423,398.7	\$531,687.6	(\$108,288.9)	\$955,086.3	100.0%

Reported by the U.S Commerce Department

24 JAN 94

**Top U.S. TRADE BALANCE Contributions Ranked by Industry:**

1993 YEAR TOTAL thru: November					
Commodity Grouping	Exports	Imports	Trade Balance	Exports + Imports	% Of Total Trade
1. AIRPLANES/PARTS:	\$27,426.2	\$5,636.6	\$21,789.6	\$33,062.8	3.5%
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5. SPECIAL IND. MACHINERY	\$16,071.3	\$12,295.0	\$3,776.3	\$28,366.3	3.0%
6. GEN. INDUST. MACHINERY:	\$17,903.7	\$15,615.2	\$2,288.5	\$33,518.9	3.5%
7. POWER GENERAT'G MACH.:	\$17,497.6	\$15,617.4	\$1,880.2	\$33,115.0	3.5%
8. RECORDS/MAG. MEDIA:	\$4,813.1	\$3,161.7	\$1,651.4	\$7,974.8	0.8%
9. CORK/WOOD/LUMBER:	\$5,321.5	\$5,060.2	\$261.3	\$10,381.7	1.1%
10. PAPER/PAPERBOARD:	\$5,920.0	\$7,973.9	(\$2,053.9)	\$13,893.9	1.5%
11. TEXTILES:	\$5,415.3	\$7,750.1	(\$2,334.8)	\$13,165.4	1.4%
12. IRON/STEEL/METALS n.e.s:	\$8,552.5	\$15,176.4	(\$6,623.9)	\$23,728.9	2.5%
13. FOOTWEAR:	\$554.5	\$7,750.1	(\$7,195.6)	\$8,304.6	0.9%
14. TOYS/GAMES:	\$2,474.1	\$10,842.3	(\$8,368.2)	\$13,316.4	1.4%
15. ELECTRICAL MACHINERY:	\$33,564.3	\$42,617.0	(\$9,052.7)	\$76,181.3	8.0%
16. TELECOMMUNICATIONS :	\$11,806.8	\$24,978.2	(\$13,171.4)	\$36,785.0	3.9%
17. ADP EQUIPMENT:	\$24,316.2	\$37,996.4	(\$13,680.2)	\$62,312.6	6.5%
18. CLOTHING:	\$4,447.4	\$31,490.2	(\$27,042.8)	\$35,937.6	3.8%
19. CARS/TRUCKS/PARTS:	\$32,755.6	\$72,627.3	(\$39,871.7)	\$105,382.9	11.0%
20. MINERAL FUELS:	\$8,817.6	\$51,707.5	(\$42,889.9)	\$60,525.1	6.3%
SELECT GROUP TOTAL:	\$320,703.8	\$424,304.1	(\$103,600.3)	\$745,007.9	78.0%
TOTAL MERCHANDISE TRADE:	\$423,398.7	\$531,687.6	(\$108,288.9)	\$955,086.3	100.0%

Reported by the U.S Commerce Department

24 JAN 94



**Argentina, Brazil, India, Indonesia, Thailand, and Venezuela Should Sign On To  
The Chemical Tariff Harmonization Agreement**

- ❑ Major portions of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) were recently completed after seven years of negotiations. However, the *market access* portion, which addresses tariffs, remains open and should be completed in February.
- ❑ The chemical industries of the United States, Europe, Japan, Australia, and Canada agreed to lower chemical tariffs under the Chemical Tariff Harmonization Agreement (CTHA) which will be part of the GATT agreement.
- ❑ A key element of the CTHA is participation by any country which has significant chemical production. Broad country coverage is sought to prevent the traditional GATT "free-rider" problem. "Free-riders" take advantage of low US tariffs to export to the US, but US products are kept out of their country by high tariffs.
- ❑ Argentina, Brazil, India, Indonesia, Thailand, and Venezuela should sign on to the CTHA and lower their chemical tariffs--some of which are in excess of 100 percent.
- ❑ Chemical output in these nations is large and growing. Each of these countries produces more than \$2.5 billion worth of chemicals per year. Brazil produces \$13 billion per year and India \$15.5 billion per year; they are not small or insignificant producers of chemicals.
- ❑ Lower tariffs will increase US chemical exports and provide additional US jobs. Each \$1 billion in chemical exports supports 4,300 US chemical industry jobs and each 1 percent increase in US market share in these nations would add nearly 1,900 chemical industry jobs.
- ❑ The economies in these "free-rider" nations are growing at about double the rate of the economies of the US, Japan, and Europe. These developing nations are important and fast-growing chemical markets. Other markets such as Europe, Japan, and Canada are mature. It is vitally important to get growing nations to sign on to the CTHA.
- ❑ US chemical exports to these "free-riders" are small relative to the size of their chemical markets and their own production. US exports are kept low by high tariffs.
- ❑ These nations have low tariff access to the US market but deny the same benefit to US producers and US workers. This is unfair and must be fixed!

**Chemical Production and Trade with The U.S.**

Nation	Real GDP Growth 1991	Chemical Production (\$, Bn)	Chemical Imports from US (\$, Bn)	Imports from US % of Production	Chemical Exports to US (\$, Bn)
Argentina	5.0%	\$3.5	\$0.5	14.3%	\$0.09
Brazil	0.8%	\$13.0	\$0.9	6.9%	\$0.30
India	5.0%	\$15.5	\$0.5	3.1%	\$0.10
Thailand	8.0%	\$2.5	\$0.4	14.8%	\$0.03
Indonesia	6.0%	\$3.5	\$0.4	10.1%	\$0.03
Venezuela	9.2%	\$2.5	\$0.6	24.0%	\$0.10

Sources: Department of State, Bureau of the Census, CMA estimates

Prepared by the Chemical Manufacturers Association, 1/11/94

Chairman GIBBONS. Certainly, they will be included.  
Mr. Romagnoli.

**STATEMENT OF EMIL ROMAGNOLI, TREASURER, NON-FERROUS METALS PRODUCERS COMMITTEE AND DIRECTOR OF GOVERNMENT AFFAIRS, ASARCO INC.**

Mr. ROMAGNOLI. Good afternoon, Mr. Chairman. My name is Emil Romagnoli. I am director of government affairs for ASARCO Inc. and treasurer of the Non-Ferrous Metals Producers Committee.

The NFMPC is a trade association of U.S. producers of primary copper and lead; that is, copper or lead metal that is produced from mined ores. I am appearing today on behalf of these industries to seek the subcommittee's support in removing barriers to international trade in refined copper and refined lead.

I will summarize my remarks, Mr. Chairman, and ask that my written statement be placed into the record.

Chairman GIBBONS. Yes, sir, it will be.

Mr. ROMAGNOLI. Our highest priority is the elimination of Japan's formidable tariff on imports of refined copper as part of the zero-for-zero tariff initiative in the Uruguay round market access negotiations. We hope that the executive branch will make the removal of tariff barriers to international trade in refined copper a very high priority during these final weeks before the end of the Uruguay round negotiations occurs.

The elimination of the tariffs on copper and at least a major reduction in tariffs on lead during the GATT negotiations is important. They will promote U.S. exports in a sector whose exports have already been expanding, and this will in turn promote jobs in the U.S. copper and lead mining industries.

During the 1980s, the mining industry underwent a painful but successful restructuring to lower costs and become internationally competitive. My own company has invested nearly \$1 billion in copper in the last 5 years in expansion projects, modernization, and in projects that contribute to environmental protection. Today, primary copper mining and metals production employs about 17,000 workers, and primary lead employs another 3,000 workers.

Our industry needs access to foreign markets. The Japanese tariffs on copper and lead restrict growth of U.S. exports to Japan and permit Japan a sheltered base for exporting into U.S. markets in other fast-growing markets of Asia. Japan's tariffs, currently in the area of about 8 percent on refined copper and effectively over 10 percent on refined lead, are very high by international standards. Our own tariffs are 1 percent ad valorem on refined copper and 3.5 percent ad valorem on refined lead.

The European Community has a tariff on refined lead that is comparable to our duty of 3.5 percent, and the elimination of that duty, we believe, would expand U.S. access to the European market.

The Uruguay round GATT tariff negotiations offer the best chance to remove foreign tariff barriers to U.S. exports. The U.S. copper and lead industries are willing to compete internationally on a true free trade basis, and we are among the first U.S. industries to join the Trade Representatives call for participants in the

zero-for-zero initiative as a cornerstone of the U.S. market access strategy.

Unfortunately, no consensus on zero-for-zero elimination was achieved among the major producing and consuming countries by the time that the formal Uruguay round negotiations ended in December in Geneva. The key obstacle has been Japan's refusal to participate. The U.S. industry has been doing all that it can to achieve a tariff elimination agreement. Industry representatives have been to Tokyo, Brussels, and Geneva any number of times in an effort to achieve this industry objective.

Last week, Ambassador Kantor testified before your subcommittee about the outstanding Uruguay round market access issues and described to you the continuing U.S. Government commitment to seek Japanese agreement to do away with the Japanese copper tariffs. Unfortunately, the negotiations with Japan still appear to be deadlocked, and it is likely to require vigorous action by the U.S. Government at the highest levels in order to convince the Japanese Government to join in this trade effort. Ambassador Kantor is today in Japan discussing a range of trade matters, and we continue to be hopeful that he is placing a high priority on the refined copper tariff issue.

A number of Senators and House Members have given strong support for our zero-for-zero initiative from both sides of the aisle on supporting zero-for-zero in nonferrous metals, and with your permission, I would like to include in the record a copy of a December 7 letter that includes the signatures of 17 House Members led by Mr. Kolbe who alluded to nonferrous metals here this afternoon and a January 26 Senate letter, sir, that also supports this.

Chairman GIBBONS. All right. Fine. We will do that.

Mr. ROMAGNOLI. As the visit of Japanese Prime Minister Hosokawa approaches and during the last remaining weeks until the Uruguay round comes to an end, we ask that all branches of our government do everything that they can to help us achieve elimination of such barriers to U.S. exports and to the further expansion of employment in our industry.

Mr. Chairman, you may recall a visit that you made to Arizona at the invitation of Mr. Udall.

Chairman GIBBONS. And Mr. Kolbe was there.

Mr. ROMAGNOLI. And Mr. Kolbe was there, and you visited a number of companies at that time.

Chairman GIBBONS. Yes, sir. I remember that very well.

Mr. ROMAGNOLI. We were a distressed industry because we were high cost and unable to compete with offshore production. Our industry bit the bullet, and we went through a painful process of rationalization and improving our financial structure and our balance sheets and putting money back into those properties, and our workers went through a painful process. We think we have become competitive with the rest of the world.

We have gone from exporting no copper in the United States to being the copper of choice in Japan. We were in 1992 the No. 2 source of imported refined copper with Japanese wire and cable producers, and we ask that we be given an even better chance to expand our exports for these important metals by getting tariff elimination.



Chairman GIBBONS. Well, I remember that visit very well, and I am glad to hear that good news.

Mr. ROMAGNOLI. Yes, sir.

Chairman GIBBONS. I am sorry it was so painful.

Mr. ROMAGNOLI. We did all that without any government assistance.

Chairman GIBBONS. Good. I wish you would whisper to some other people in the private sector that it can be done.

Mr. ROMAGNOLI. Thank you for permitting us to be here.

[The prepared statement and attachments follow:]

# NON-FERROUS METALS PRODUCERS COMMITTEE

1225 Nineteenth Street, N.W. - Suite 210  
Washington, D.C. 20036

Telephone: (202) 466-7720  
Telecopier: (202) 466-2710

BEFORE THE

COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE

STATEMENT REGARDING  
THE URUGUAY ROUND TARIFF NEGOTIATIONS

ON BEHALF OF THE  
NON-FERROUS METALS PRODUCERS COMMITTEE

BY

EMIL ROMAGNOLI  
DIRECTOR OF GOVERNMENT AFFAIRS  
ASARCO INCORPORATED

FEBRUARY 2, 1994

## I. Introduction and Summary

I am Emil Romagnoli, Director of Government Affairs of ASARCO Incorporated, and Treasurer of the Non-Ferrous Metals Producers Committee, the NFMPC. The NFMPC is a trade association of U.S. producers of primary copper and lead, that is copper or lead metal that is produced from mined ores. I am appearing today on behalf of these industries to seek the Committee's support in removing barriers to international trade in refined copper and refined lead. Our highest priority is the elimination of Japan's formidable tariff on imports of refined copper in the context of the "Zero-for-Zero" tariff initiative in the Uruguay Round market access negotiations. We hope that the Executive Branch will make the removal of tariff barriers to international trade in refined copper a very high priority during these final weeks before the end of the Uruguay Round negotiations.

## II. Why is Tariff Elimination an Important Goal for the U.S. industry?

The elimination of the tariffs on copper and at least a major reduction in tariffs on lead during the GATT negotiations is important because it will promote U.S. exports, which in turn will promote jobs in the U.S. copper and lead mining industries. Let me cite five specific points about the economic importance of this free-trade initiative to these U.S. industries.

First, the U.S. mining industry is alive, well and has become a "high tech" sector with major export capabilities:

- o During the 1980s, the mining industry underwent a grueling but successful restructuring to lower costs and became internationally competitive. Today, primary copper employs about 17,000 workers. Primary lead employs another 3,000 workers.
- o The copper industry is using highly sophisticated technology in mining, smelting and advanced extraction technologies such as solvent extraction/electrowinning (SX/EW).
- o Exports are particularly important for U.S. companies with copper smelters in the western states. While the U.S.-Canada Free-Trade Agreement has encouraged Canadian copper to fill U.S. demand in the eastern

United States, U.S. producers have expanded exports to the Pacific Rim countries. Exports now account for about one-third of the production for some U.S. companies.¹

My second point is that as U.S. mining exports and employment expand, the industry needs access to foreign markets. The Japanese tariffs on copper and lead restrict growth of U.S. exports to Japan and permit Japan a sheltered base for exporting into U.S. markets in other fast-growing areas of Asia.² Japan's tariffs of about 8% on refined copper and over 10% on refined lead are very high by international standards.³ The EC has a tariff on refined lead that is comparable to the U.S. duty of 3.5%. The elimination of the EC duty would expand U.S. access to the EC market.

Third, the Uruguay Round GATT tariff negotiations offer the best chance to remove foreign tariff barriers to U.S. exports. The U.S. copper and lead industries are willing to compete internationally on a true free-trade basis and were among the first U.S. industries to join the U.S. Trade Representative's call for participants in the "Zero-for-Zero" Tariff initiative as a cornerstone of the U.S. market access strategy.⁴

Fourth, only the elimination of the foreign tariffs will have really meaningful commercial effects given the commodity product nature of these metals. With commodity products, even a small tariff can have a large commercial impact.

Fifth, Japan's refusal to participate in a copper "zero-for-zero" agreement has been based on the EC's failure to join in duty elimination on aluminum. The Japanese position is strictly a political one since Japan has no significant primary aluminum industry. The difficulties in the aluminum negotiations should not be permitted to prevent a tariff elimination agreement on other non-ferrous metals, such as copper and lead.

### III. Current Situation

Unfortunately, no consensus agreement on the "Zero-for-Zero" elimination was reached among the major producing countries by the time that the formal Uruguay Round negotiations ended in Geneva on December 15. The key obstacle has been Japan's refusal to participate. The U.S. industry has been doing all that it can to achieve a tariff elimination agreement. Industry

---

¹From exporting virtually no copper in 1987, the domestic refined copper industry in 1991 exported over 270,000 metric tons worth \$624.3 million. From under 3,000 metric tons in 1987, refined lead exports grew to over 60,000 metric tons in 1991, valued at \$36.8 million.

² Japanese industries that consume refined copper support the elimination of the Japanese refined copper tariff. The Japan Wire and Cable Makers Association has publicly called for the elimination of this tariff. There is virtually no mining of copper in Japan. Japanese smelters must obtain ores and concentrates mined in other countries.

³The U.S. tariffs are 1.0% ad valorem on refined copper and 3.5% ad valorem on refined lead.

⁴ The U.S. Government sought to break the deadlock in the GATT tariff negotiations through the initiative called the "Zero-for-Zero" proposal. It provided that the United States would eliminate entirely its tariffs on specified products if key foreign countries would eliminate their tariffs on the same products.



representatives have visited Tokyo, Brussels, and Geneva numerous times in an effort to achieve this industry objective.

Last week, Ambassador Kantor testified before your Committee about the outstanding Uruguay Round market access issues and described to you the continuing U.S. Government commitment to seek Japanese agreement to do away with the Japanese copper tariffs. Unfortunately, the negotiations with Japan still appear to be deadlocked. We understand that it will take vigorous action by the U.S. Government at the highest level to convince the Japanese Government to join in this free trade effort. Ambassador Kantor is today in Japan discussing a range of trade matters. We are hopeful that he is placing a high priority on the refined copper tariff issue.

#### IV. Congressional Support

Our industries have been particularly appreciative of the strong Congressional support that we have received in pursuing this goal. Seventeen members of the House of Representatives signed a letter on December 7, 1993, asking Ambassador Kantor to make the elimination of the Japanese copper tariff a high priority. On January 26, twelve members of the Senate sent a letter to the President urging him to make the achievement of Japanese agreement to eliminate the tariff a very high priority. Individual members of Congress, such as Jim Kolbe and Richard Gephardt, and Senators, such as Dennis DeConcini and Max Baucus, have been very active in assisting the industry in this matter. For all of these efforts, we are extremely grateful. Nonetheless, as the visit of Japanese Prime Minister Hosokawa approaches and during the few remaining weeks until the Uruguay Round comes to an end, we ask all Branches of our Government to do everything that they can to achieve elimination of such barriers to U.S. exports and to the further expansion of employment in our industry.

DANIEL PATRICK MOYNIHAN, NEW YORK, CHAIRMAN

MAX BAUCUS, MONTANA  
 BRYO L. BORN, OREGON  
 BILL BRADLEY, NEW JERSEY  
 GEORGE J. MITCHELL, MAINE  
 DAVID PRYOR, ARKANSAS  
 DONALD W. ROUSE, JR., MICHIGAN  
 JOHN B. ROCHERFELDER IV, WEST VIRGINIA  
 TOM DASCHLE, SOUTH DAKOTA  
 JOHN BREADE, LOUISIANA  
 KEAT CONRAD, NORTH DAKOTA

BOB PAGE, OREGON  
 BOB DOLE, KANSAS  
 WILLIAM V. ROY, JR., DELAWARE  
 JOHN C. DANFORTH, MISSOURI  
 JOHN H. CHAFFE, RHODE ISLAND  
 DAVID DURCHBARGER, MINNESOTA  
 CHARLES E. GRASSLEY, IOWA  
 GUNN O. HATCH, UTAH  
 MALCOLM WALLOP, WYOMING

## United States Senate

COMMITTEE ON FINANCE  
 WASHINGTON, DC 20510-6200

January 26, 1994

LAWRENCE O'DONNELL, JR., STAFF DIRECTOR  
 DONALD J. MINA, STAFF, MINORITY CHIEF OF STAFF

The Honorable Bill Clinton  
 President of the United States  
 The White House  
 1600 Pennsylvania Avenue N.W.  
 Washington, D.C. 20500

Dear Mr. President:

The U.S. primary copper and lead industries make important contributions to the economies of our states. Their increasing export activities are testament to their success in becoming internationally competitive.

These companies and workers look to the Uruguay Round tariff negotiations to help remove foreign barriers to the continued expansion of U.S. refined copper and lead exports. Key to the success of these negotiations is the cooperation of Japan, whose high tariffs on refined copper and lead discourage U.S. exports not only to Japan but also to other fast-growing Far Eastern markets.

We ask that you place a very high priority on securing Japanese agreement to join the United States in eliminating the tariff on refined copper, and in either eliminating the tariff on lead or reducing it substantially. We understand that the European Union should readily agree to this proposal, as the E.U. has no applicable tariff on refined copper and has already offered to cut its lead tariff to 2.5% ad valorem.

We applaud the significant successes that you have achieved so far in the Uruguay Round negotiations. Achieving this additional step for fair trade and economic efficiency will make an important contribution to the growth of the primary copper and lead industries of our states.

Sincerely,

*Renée McConico*  
*Samuel R. Brown*

*Dirk Kempthorn*  
*Steve Daines*

*Robert J. Bennett*  
*Jeff Bond*  
*Quinn Tatch*  
*Jeff Brown*

*Robert J. Bennett*  
*John McCain*  
*Max Baucus*

**NON-FERROUS METALS PRODUCERS COMMITTEE**

1225 Nineteenth Street, N.W. - Suite 210

Washington, D.C. 20036

Telephone: (202) 466-7720  
Telecopier: (202) 466-2710

**Signatories of the January 1994 Copper and Lead Letter**

1. Max Baucas, MT (D)*
2. Robert Bennett, UT (R)
3. Jeff Bingaman, NM (D)
4. Christopher Bond, MO (R)
5. Richard Bryan, NV (D)
6. Conrad Burns, MT (R)
7. John Danforth, MO (R)
8. Dennis DeConcini, AZ (D)
9. Peter Domenici, NM (R)
10. Orrin Hatch, UT (R)
11. Dirk Kempthorne, ID (R)
12. John McCain, AZ (R)

* Sponsor



## Congress of the United States

Washington, DC 20515

December 7, 1993

The Honorable Michael Kantor  
United States Trade Representative  
600 17th Street, N.W.  
Room 209  
Washington, D.C. 20506

Dear Ambassador Kantor:

As the Uruguay Round trade negotiations enter the final week, we are writing to you to urge American negotiators to continue to press hard for zero tariffs and barrier-free trade in refined copper and lead. U.S. copper and lead industries have done their part to become revitalized and an internationally competitive cornerstone of the economies of our states and of the U.S. industrial base as a whole. These industries and their workers have made major sacrifices to realize this goal.

The Uruguay Round trade negotiations offer an ideal opportunity to accomplish barrier free trade in refined copper and lead trade. The U.S. copper industry and lead industries were among the early participants in the U.S. Government's "zero-for-zero" tariff initiative in which they offered to eliminate entirely their tariffs on redefined copper and lead if other countries would do the same. A copper and lead industry delegation has just returned from meetings in Brussels and Geneva to encourage EC support and to ensure that U.S., Canadian and Australian negotiators fully understand the industries' free-trade proposal.


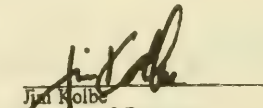
The most important impediment to free trade in copper is Japan's tariff which is approximately 8 percent, and is particularly high for a commodity product. The U.S. copper tariff, on the other hand, is only 1 percent. The copper industry will achieve its goal if countries participate in the zero-for-zero tariff initiative.

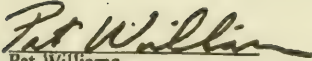
Trade in refined lead is also impeded in Japan and Europe by their effective tariffs of over 10 and 3.5 percent, respectively.

The U.S. copper and lead industries have already shown that they can take advantage of new export opportunities in Japan and elsewhere. Full free trade in refined copper and lead would strengthen U.S. exports and increase employment in our states where thousands of workers are engaged in copper and lead production.

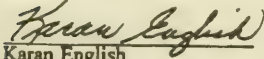
We believe that the elimination of tariffs on refined copper and lead should be a high priority for U.S. negotiators. Both the United States and its trading partners will benefit from a Uruguay Round agreement that lets free market forces guide international trade in these products. In assessing the overall benefits of the agreement, we will be closely evaluating the non-ferrous metal provisions.

Sincerely,

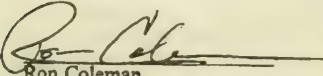
  
Bill Richardson  
Chief Deputy Majority Whip  
Jim Kolbe  
Member of Congress



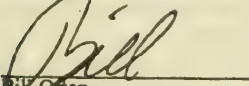
Pat Williams  
Deputy Majority Whip



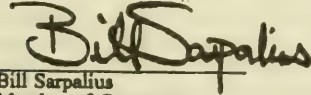
Karan English  
Member of Congress



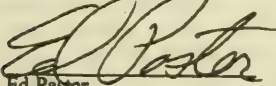
Ron Coleman  
Member of Congress



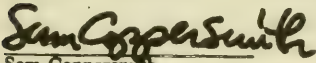
Bill Orton  
Member of Congress



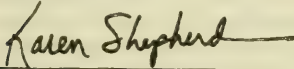
Bill Sarpalius  
Member of Congress



Ed Pastor  
Member of Congress



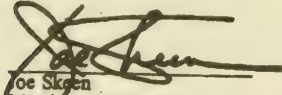
Sam Coppersmith  
Member of Congress



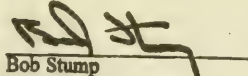
Karen Shepherd  
Member of Congress



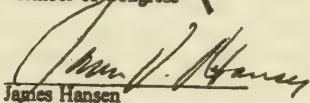
Jon Kyl  
Member of Congress



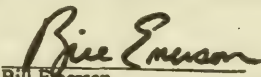
Joe Skogen  
Member of Congress



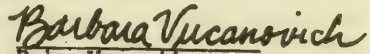
Bob Stump  
Member of Congress



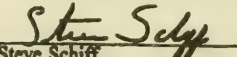
James Hansen  
Member of Congress



Bill Emerson  
Member of Congress



Barbara Vucanovich  
Member of Congress



Steve Schiff  
Member of Congress

Chairman GIBBONS. Yes, sir. Good luck to you.  
Mr. Meister.

**STATEMENT OF FRED A. MEISTER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, INC.**

Mr. MEISTER. Good afternoon, Mr. Chairman. My name is Fred Meister. I am the president and chief executive officer of the Distilled Spirits Council of the United States, representing the U.S. producers and exporters of distilled spirits.

I would like to comment on the market access negotiations which will determine the degree to which U.S. distilled spirit companies will be able to expand their exports in the future. I also will raise several issues which should be addressed in the implementing legislation and the statement of administrative action.

In 1990, DISCUS endorsed the U.S. zero-for-zero initiative, and we proposed that distilled spirits be included as a specific sector for tariff elimination. Thanks to the skill and hard work of the U.S. negotiating team, the major participants have agreed to eliminate tariffs on all types of whiskey and brandy, which together make up approximately 65 percent of total U.S. exports of distilled spirits.

Most unfortunately, however, the results achieved so far do not provide for the elimination of tariffs on other types of distilled spirits, such as vodka, rum, gin, and liqueurs. Exports of these products are critical to our members. They represent the growing segment of our industry as consumer preferences have shifted markedly toward white spirits over the past decade. Unless tariffs are eliminated, U.S. exporters of these products will not have the opportunity to compete in these growth sectors and will face a competitive disadvantage vis-a-vis exports of whiskey and brandy.

This dismal event could occur because of one country, Japan. Only Japan has objected to the elimination of tariffs on white spirits and liqueurs. Japan currently applies tariffs of 18 to 25 percent on these products and also assesses excessive and discriminatory liquor taxes. As a result imported white spirits and liqueurs have been shut out of the Japanese market. White spirits and liqueurs accounted for nearly 73 percent of the total volume of spirits sold in Japan in 1992, with Japanese producers, because of these barriers, supplying 99 percent of the total.

Chairman GIBBONS. That much saki?

Mr. MEISTER. Shochu, a white, very tasteless Japanese drink. Japanese consumers would love to have access to our vodkas and gins and other products, but because they are taxed at 3 to 9 times the rate of this domestic product, they simply cannot afford it.

We were very pleased to hear Ambassador Kantor inform the committee last week that the United States will continue to press Japan to agree to the elimination of tariffs on white spirits and liqueurs. There simply is no justification other than blatant protectionism for Japan's position.

Also still to be resolved is the phaseout period for eliminating tariffs on distilled spirits. Japan has insisted on 10 years, while all other participants favor 5 years. We have sought the shortest possible phaseout period, but we are prepared to accept a somewhat



longer phaseout if that is absolutely necessary to have white spirits included in the zero-for-zero tariff elimination process.

Mr. Chairman, some participants in the distilled spirits agreement may wish to adopt a more rapid phaseout schedule in the future, and we would like to suggest that the subcommittee consider providing authority in the implementing legislation for accelerating the elimination of tariffs in such cases. Similar authority was provided for both in the U.S.-Canada Free Trade Agreement and the NAFTA, and it has been used.

Chairman GIBBONS. Very effectively.

Mr. MEISTER. Our industry also will benefit from the agreement on intellectual property which provides for the protection of geographical indications for wine and, at our request, distilled spirits. This agreement establishes an international basis for securing recognition and protection for distinctive American distilled spirits such as bourbon and Tennessee whiskey. This would ensure that only the genuine American products could be sold as bourbon and Tennessee whiskey in foreign markets. In considering the Uruguay round agreements, we would ask the committee to direct the administration to initiate negotiations under the TRIPs agreement to achieve this objective as soon as possible.

Finally, Mr. Chairman, I must note that the TRIPs agreement is deficient in one key respect. It does not provide for strengthened protection of importation rights in respect of intellectual property. Like the NAFTA, it is silent in this area.

As trade barriers fall, the incidence of trade in gray market goods will increase. Thus, it is essential that U.S. companies who deal with branded products, and rely on the reputation of those branded products, continue to have access to the full range of means currently provided under U.S. law to protect their intellectual property and to enforce their licensing agreements governing the distribution and sale of those products. As was done in the case of NAFTA, we strongly recommend that the statement of administrative action make clear that the TRIPs agreement does not require and will not result in any change to current U.S. practice with regard to importation rights for trademarked goods.

In conclusion, Mr. Chairman, we consider the results achieved so far in the Uruguay round to be substantial and of significant benefit to the U.S. distilled spirits industry. However, the zero-for-zero agreement must be expanded to cover white spirits and liqueurs, so that all U.S. exporters will benefit from improved access. Such an agreement will allow us to give the Uruguay round agreements our full and active support, as we did with NAFTA.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Mr. F.A. Meister, President/CEO  
Distilled Spirits Council of the U.S., Inc.

Good afternoon, Mr. Chairman; members of the Subcommittee.

My name is Fred Meister. I am President/CEO of the Distilled Spirits Council of the United States, Inc. (DISCUS). DISCUS is the trade association which represents U.S. producers and marketers of distilled spirits. Our member companies also export distilled spirits to more than ninety countries around the world.

Introduction

I am very pleased to have this opportunity to present our views on the results achieved so far in the Uruguay Round negotiations, and, in particular, to comment upon the market access negotiations. The outcome of these negotiations, which are still underway, will determine in large part the degree to which U.S. exporters of distilled spirits will benefit from the trade agreements reached in the Uruguay Round.

I also wish to comment briefly on the agreement on trade-related intellectual property, and I would like to raise several issues which we believe should be addressed in the context of the implementing legislation and the statement of administrative action accompanying the Uruguay Round agreements.

The U.S. distilled spirits industry has been a staunch supporter of this administration's efforts, and those of its predecessors, to reduce barriers to U.S. exports. Like the other industries represented on this panel today, exports hold the key to our industry's future economic vitality. For a variety of reasons, including increases in Federal and State tax burdens, the U.S. market for distilled spirits has shrunk by an average of two percent per year for the past decade. With this trend expected to continue for the foreseeable future, our members must expand their exports in order to offset the sales and job losses which they have incurred in the U.S. market. The Uruguay Round negotiations represent the best, and perhaps the last, opportunity for them to secure improved access for their products in key markets around the globe.

Market Access Negotiations

In 1990, DISCUS endorsed the "zero for zero" tariff elimination approach advanced by U.S. trade negotiators. We proposed that distilled spirits be included as a specific sector for tariff elimination under the U.S. initiative. Since then, and as a member of the Zero Tariff Coalition, we have worked closely with U.S. trade negotiators and with our distilled spirits industry counterparts abroad to generate support for a multilateral agreement to eliminate tariffs on trade in distilled spirits.

Thanks to the skill and the hard work of the U.S. negotiating team, the results announced in December go a long way toward achieving this objective. The United States was able to secure the agreement of its major trading partners to the elimination of tariffs on some distilled spirits, namely all types of whisky and brandy. These products together make up approximately sixty five percent of total U.S. exports of distilled spirits (on a volume basis). U.S. producers of these products should be able to increase their exports significantly in the years ahead, as tariffs are progressively reduced in their major foreign markets. And that will mean more jobs in places like Kentucky and Tennessee, and in California.

Unfortunately, to our great disappointment, the results achieved so far do not provide for the elimination of tariffs on other types of distilled spirits, such as vodka, rum, gin, and liqueurs. Exports of these products are very important to our members. In 1992, they represented approximately 25 percent (by volume) of total U.S. exports and accounted for more than fifteen percent of the total value of our members' foreign sales.

More importantly, these so-called "white spirits" and liqueurs represent the growing segment of our industry. Over the past decade, consumption trends in the United States and in other major markets around the world have shifted markedly away from whisky and brandy toward white spirits. With consumer preference for lighter spirit drinks and coolers continuing to grow, sales in these product categories are expected to increase significantly. Unless tariffs are eliminated, U.S. producers of white spirits and liqueurs will be denied the opportunity to compete in these growth sectors abroad, while finding themselves at a competitive disadvantage vis-a-vis exporters of whisky and brandy.

Mr. Chairman, of the major participants in the negotiations, only Japan has objected to the inclusion of white spirits and liqueurs in the distilled spirits "zero for zero" agreement. Japan currently applies tariffs of 18-25 percent on imports of these products. These products also face excessive and discriminatory taxes under Japan's system of liquor taxation. Together, these barriers have effectively prevented imported white spirits and liqueurs from entering the Japanese market. Nearly 73 percent of the total volume of spirits sold in Japan in 1992 were white spirits and liqueurs. Of this total, Japanese producers supplied ninety nine percent.

I was extremely pleased to hear Ambassador Kantor confirm in his statement before the full Committee last week that the United States intends to continue to press Japan to agree to the elimination of tariffs on white spirits and liqueurs. There simply is no justification -- other than protectionism -- for Japan's position. The inclusion of these products in the "zero for zero" agreement is critical to our industry, and we would very much appreciate the Subcommittee's continued support for this objective as the market access negotiations are brought to their final conclusion.

I would like to add that we were also pleased that the Administration appears ready to join the European Union in seeking the reform of Japan's discriminatory system of liquor taxation this year. Nearly seven years ago, a GATT panel ruled that this system is inconsistent with Japan's GATT obligations. Japan still has not brought these taxes into full conformity with the GATT. The elimination of discriminatory treatment under this system would greatly improve the terms of access for imported distilled spirits to the Japanese market.

#### Staging

Also still to be resolved is the phase-out period for eliminating tariffs on distilled spirits. The general rule adopted for most of the product sectors subject to "zero for zero" agreements is five years. Japan, alone, has insisted on a ten year phase-out period for distilled spirits. All other participants in the distilled spirits "zero for zero" agreement are prepared to eliminate their tariffs over five years.

We have sought the shortest phase-out period, i.e., no more than five years, for the elimination of distilled spirits tariffs, so that U.S. exporters may benefit as soon as possible from enhanced access to foreign markets for their products. Nevertheless, we are prepared to accept a somewhat longer phase-out period, if that is absolutely necessary to ensure that all distilled spirits are covered in the "zero for zero" agreement.

It is possible that some participants in the distilled spirits agreement, including the United States, may decide at some point in the future that it is in their collective interest to adopt a more rapid phase-out schedule than that agreed to by all the participants in the agreement. With this possibility in mind, Mr. Chairman, I would like to suggest to the Subcommittee that it consider including in the implementing legislation authority for the accelerated elimination of tariffs in each of the sectors covered by "zero for zero" agreements. Similar authority was included in the implementing legislation for both the U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement and has been utilized to the considerable benefit of U.S. exporters.



### Trade-Related Intellectual Property

The U.S. distilled spirits industry also stands to benefit from the agreement on trade-related intellectual property (TRIPs) reached in the Uruguay Round negotiations. The so-called TRIPs agreement provides for the protection of geographical indications for wines and — at our request — distilled spirits. For a number of years, our industry has sought protection for distinctive American distilled spirits, such as Bourbon and Tennessee Whiskey, in our major export markets. This protection would ensure that only the genuine American products, produced in accordance with U.S. regulations, can be sold abroad as Bourbon and Tennessee Whiskey. Such protection is provided for in the NAFTA, and in a pending bilateral agreement with the European Community.

The TRIPs agreement provides, for the first time, a mechanism for securing recognition and protection for distinctive American distilled spirits on a multilateral basis. We plan to request the Administration to initiate negotiations toward this end as soon as possible after the TRIPs agreement enters into force. We would ask the Committee to support this objective and, as part of its consideration of the Uruguay Round agreements, to direct the Administration to initiate such negotiations as soon as possible.

Finally, Mr. Chairman, I must note that the TRIPs agreement is deficient in one key respect. It does NOT provide for strengthened protection of importation rights in respect of intellectual property. The TRIPs agreement is silent in this area. As a result, signatories are free to maintain their current legal and regulatory regimes addressing gray market goods.

As tariff barriers fall and U.S. exports increase, so too will the incidence of trade in gray markets goods. Thus, it is essential that U.S. companies continue to have access to the full range of means currently provided under U.S. law to protect their intellectual property and to enforce their licensing agreements governing the distribution and sale of their products. As was done in the case of the NAFTA, with the support and assistance of this Subcommittee, we strongly recommend that appropriate language be included in the statement of administrative action, making clear that the TRIPs agreement does not require and will not result in any change in current U.S. practice with regard to importation rights for trademarked goods.

### Conclusion

In conclusion, Mr. Chairman, DISCUS and its member companies consider the results achieved so far in the Uruguay Round negotiations to be substantial and of significant benefit to the U.S. distilled spirits industry. However, more remains to be accomplished in the remaining few days ahead. We urge that the "zero for zero" agreement be expanded to cover white spirits and liqueurs, as well as whisky and brandy, so that all U.S. exporters of distilled spirits will benefit from improved access to foreign markets. Such an agreement will allow us to give the Uruguay Round agreements our full and active support when they are presented to the Congress for approval later this year.

Chairman GIBBONS. Thank you. I thank each one of you, too, for your statements.

That reminds me that we have got a lot of work still to be done and done in a very limited amount of time here.

Mr. MEISTER. Yes, sir.

Chairman GIBBONS. We will try to make sure that the administration pays proper attention to what you have advocated here, and I encourage you to continue to push them on that.

Mr. MEISTER. Yes, sir.

Chairman GIBBONS. I am hopeful that out of the Japanese Prime Minister's visit that we are going to get some real progress, but I guess hope springs eternal when you deal with the Japanese. If it weren't for hope, I don't know what you would live on.

Thank you very much.

The Motor & Equipment Manufacturers Association, Mr. Bates; the Automotive Parts & Accessories Association, Inc., Mr. Kadrach; and the Rubber and Plastic Footwear Manufacturers Association, Mr. Cooper.

Mr. Bates.

#### STATEMENT OF CHRISTOPHER M. BATES, DIRECTOR, INTERNATIONAL TRADE, MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. BATES. Good afternoon, Mr. Chairman. Chris Bates with the Motor & Equipment Manufacturers Association.

Chairman GIBBONS. Yes, sir.

Mr. BATES. We appreciate your endurance this afternoon. It has been a long process. I will try and keep my remarks very brief.

Chairman GIBBONS. Thank you.

Mr. BATES. We represent manufacturers of motor vehicle parts and equipment, service, tools, and automotive chemicals. We have been around since 1904, and we have had a very long enduring interest in trade issues. We have testified before you in the past.

Chairman GIBBONS. That is true.

Mr. BATES. I think you know that we try to take a balanced approach in these matters.

We think on balance that the Uruguay round agreements represent a modest, albeit very modest from our standpoint, step toward greater international trade liberalization in our sector which is, as you know, very tightly integrated in North America and Europe, and increasingly between Asia, Europe, and North America.

We have some concerns which I would like to lay out in terms of improvements that I think can be finessed to a degree in implementing legislation and in the final weeks of negotiations in the market access area.

Chairman GIBBONS. Good. We would be glad to have those.

Mr. BATES. First of all, let me lay out the six primary objectives that we had, and then I will comment briefly on what we would like to see done and what our assessment of agreement is.

First, we called at the outset for harmonization of industrial country tariffs on passenger cars and motor vehicle parts at the 2 to 2.5-percent level. We made significant progress in this area, particularly with respect to the Europeans who have tariffs that are

about double our level. We have brought them down, so they are not equivalent, but much closer to ours.

Second, we sought significant reductions in tariffs in developing countries, particularly in the key markets of Korea, the ASEANs, and Latin America. I also would add Turkey to that list which has a fast-growing automotive market, albeit starting from a low base.

We have been concerned about this area which represents a very substantial portion of the potential growth in our industry, and to which we do not have access. We are kept out by both tariff and nontariff barriers.

We have sought bindings as well as significant, by which I mean about 50 percent or more, reductions; more than formula cuts here. To date, I think our feeling is that we achieved very little. We have got ceiling bindings pretty much across the board, but in many cases, these were at best at the applied rates that are currently enforced.

This means effectively very little new market access in terms of tariffs at least that will result from the GATT Uruguay round. This should be a concern not only to our industry, but to the Congress and to the administration. We know that there is an initiative with Korea at least to continue to push for more liberalization. Frankly, we would like to see it expanded to include the ASEANs.

With regard to Latin America, we have a somewhat better situation in that we have the NAFTA in place now, and we have reasonable expectations of free trade agreements with the balance of the area on terms which are essentially preferential to U.S. interests. So we have got an alternative route of solution for that problem that we clearly do not have in the broader Asia-Pacific region.

Another area of concern had been the TRIMs agreement—covering local content and export performance requirements which we face virtually everywhere around the world. The GATT provided very little discipline in this area in the past. We got essentially a mechanism to begin disciplining those areas. So that is a very real step forward, but it is more limited in scope than we and others had hoped for, and it is clearly one that is going to require our very careful attention in order to see that it is implemented properly. For that reason, we are asking that this subcommittee and others in Congress work with us to get the administration to accept an annual reporting requirement lodged in the Commerce Department to make sure that this agreement is fully enforced. Also it will ensure that we have done our homework so that when a 5-year review process comes up on the TRIMs agreement, we have the facts at hand.

A fourth area is in the area of intellectual property protection. We had a defensive goal which is to make sure that our industrial design protection laws here in the United States were not eroded. We accomplished that. We believe, second, that we got at least incremental improvements in protection of other forms of intellectual property. That also was concluded in our favor in the round. So, by and large, we are pretty happy with that part of the agreement.

The fifth area has been preservation of U.S. laws relating to protecting U.S. industry against unfairly traded imports. We have very mixed feelings in this area, frankly. Our negotiators, as you know, faced very tough going in this area. By most accounts, they



did reasonably well in trying to hold those forces off. On the other hand, what resulted has some rather significant ambiguities in it that make us nervous and that potentially can shift the burden against those industries that are trying to seek relief under U.S. statute. We would like to see those cleaned up.

We have submitted for the record an attachment of specific recommendations in the dumping area. We also would like to see clarification in the section 301 area, particularly as it relates to provisions that were in the 1988 Trade Act dealing with government toleration of anticompetitive practices.

The sixth area relates to strengthening of the GATT and the 1979 GATT codes. Mainly, we are looking for a way to get the developing countries to be more active players in the GATT and to subject themselves to those provisions. We think the World Trade Organization has the potential to do many of those things for us, to eliminate much of the problem of free ridership. But, it does require a major leap in faith, and it is again an area that is going to require some attention.

We hope, therefore, in the next several weeks that this committee and the full Congress will get actively engaged in looking at this agreement. Clearly, we have a window of opportunity in 2 weeks, maybe, to 1 month to try and clean up some of these areas in the negotiation, and then obviously as we move forward with the fast track process, to look at specific language in implementing legislation that will clarify at least our own interpretation of our own law.

With that, let me conclude, and, again, thank you very much for holding this hearing. Also I would like to thank you and the other members of this subcommittee who were in the forefront of the NAFTA debate. We strongly supported that agreement and think it will rebound to the benefit of our industry and its workers.

Thank you.

[The prepared statement and attachments follow:]

# **MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION**

**Statement of  
Christopher M. Bates, Director, International Trade**

**Before the  
HOUSE WAYS AND MEANS COMMITTEE, SUBCOMMITTEE ON TRADE  
February 2, 1994**

The Motor & Equipment Manufacturers Association (MEMA) welcomes the opportunity to present its views to the Subcommittee on Trade regarding the impact of the GATT Uruguay Round agreement on the U.S. motor vehicle parts and equipment industry.

On balance, MEMA believes this agreement represents a modest step toward greater international trade liberalization in the huge, and increasingly integrated global motor vehicle parts and equipment industry. This view is a preliminary one, based on certain expectations about the outcome of final tariff negotiations still in progress.

Based on our understanding of the results to date, the Uruguay Round agreement would narrow the disparity in tariffs between the United States and its major industrialized trading partners for our industry's products. It also would mandate the elimination of local content requirements and certain export-related performance requirements. Further, it would help ensure improved international protection of intellectual property rights without requiring undesirable changes in U.S. industrial design laws.

However, the agreement appears to fall well short of our industry's expectations regarding improved market access in major newly industrialized economies such as Korea, the ASEANs, and Turkey. These fast-growing automotive markets offer major new export opportunities for our industry which will not be realized if their substantial remaining tariff and non-tariff barriers are not removed.

MEMA is thus urging the Administration to seek additional concessions from these countries prior to the tabling of final tariff offers later this month. We ask this Committee to lend its strong support to this initiative, which to date seems to focus only on Korea.

In addition, MEMA is concerned that the new GATT agreement could make it more difficult for U.S. industries such as our own to seek and obtain future relief from unfairly traded imports. We thus urge Congress to insist on certain clarifications with respect to these U.S. laws through implementing legislation for the GATT Uruguay Round. Specific concerns and suggested remedies are outlined in an attachment to this statement.

Founded in 1904, MEMA exclusively represents and serves U.S. manufacturers of motor vehicle parts, service tools and equipment, and automotive chemicals. Its members produce and sell original equipment components to all classes of vehicle manufacturers and replacement parts and allied service products used in the repair and maintenance of motor vehicles.

MEMA has played an active advisory role to the Commerce Department and Office of the U.S. Trade Representative throughout the GATT Uruguay Round negotiations. The Association places highest priority on specific agreements related to market access, trade-related investment measures (TRIMs), trade-related aspects of intellectual property rights (TRIPs), antidumping measures, and dispute settlement.

Other issues of significant concern to MEMA include the agreements: 1) forming the World Trade Organization (WTO); 2) reforming GATT Articles XVIII (balance of payments waivers) and XIX (import safeguards); and 3) establishing international principles and a work plan to harmonize customs-related rules of origin.

### MEMA Objectives in the GATT Uruguay Round

MEMA defined six primary objectives for the GATT Uruguay Round:

- Harmonization of industrialized country tariffs on passenger cars and motor vehicle parts at 2-2.5% ad valorem;
- Significant reductions in and binding of developing-country tariffs on motor vehicle parts, particularly in the key emerging markets of Korea, the ASEANs, and Latin America;
- New prohibitions on use of local content and export performance requirements, the main non-tariff barriers limiting our industry's exports to developing countries.
- Improvements in international protection of intellectual property rights in a manner consistent with the high level of protection now afforded in our market under U.S. law.
- Preservation of U.S. laws protecting our industry and others from dumping and other forms of unfair trade.
- Strengthening of the GATT and 1979 Tokyo Round codes, principally by requiring developing countries to increasingly play by the same trading rules as the United States and other industrialized nations.

In addition, MEMA supported the market access goals of U.S. medium and heavy truck builders to obtain parity in international tariffs at or near the very low (4% ad valorem) U.S. rate, as an indirect means to promote parts exports. In most instances, other countries maintain rates of 20% or more against U.S. medium and heavy trucks. Unfortunately, this particular market access goal was not achieved.

### Tariff Protocol - Market Access

Because the Uruguay Round tariff negotiations are still in progress, it is difficult for MEMA to comment authoritatively on the impact of this portion of the Round on U.S. producers of motor vehicle parts and allied products.

**The market access talks represent the single most important area of the GATT negotiations for our industry. To date, our expectations in this area have not been met to the degree necessary to gain our full endorsement of the Uruguay Round package. Our support for U.S. legislation to implement the Round will be determined by the final results of the tariff negotiations and congressional steps to address the other concerns laid out in this testimony.**

On the positive side of the ledger, the Round provides for a five-year schedule of tariff reductions, a more rapid phase-out than provided in prior GATT rounds. MEMA also welcomes the EC's decision to move its higher tariffs on motor vehicle parts into closer alignment with those of the United States. In addition, we are pleased that major developing countries in Latin America and Asia have committed themselves to binding most of their tariffs, many for the first time.

These gains are offset by the unwillingness of developing countries to offer genuine cuts in applied tariffs in addition to ceiling bindings. In effect, our industry has achieved protection against major backsliding on tariffs in advanced developing countries, but little new market access.



In Latin America, our industry now has a preferential free trade agreement with Mexico and has realistic expectations of additional regional trade liberalization initiatives within the next few years. In Asia this is not the case, and thus the Uruguay Round results assume relatively greater importance. This is particularly troubling given the high-growth trajectory of most auto-producing nations in Asia and the easy access automotive producers in those countries already enjoy to the U.S. market.

Without further action to obtain significant cuts in applied tariffs in Korea and the ASEANs in particular, U.S. parts producers will continue to face high tariffs in addition to non-tariff barriers in those key markets through the balance of this decade. Bad precedents also will be set for GATT accession talks with China and Taiwan. This will limit U.S. export growth and force some U.S. producers to gain access principally through direct investment in key Asian markets.

**Given the magnitude of trade in our industry and the openness of our market, we strongly urge Congress to work with us to insist on further tariff reductions in Korea and the ASEANs before the Round is officially concluded.**

#### **Trade-Related Investment Measures (TRIMs)**

The GATT TRIMs text imposes new prohibitions on the use of local content and trade balancing requirements within a 2-year period for developed countries, a 5-year period for developing countries, and a 7-year period for the least developed nations. The TRIMs agreement also requires a self-audit after five years, creating an opportunity to expand prohibitions to include other trade-distorting forms of performance requirements.

MEMA believes this agreement is a highly positive one which should progressively limit the ability of developing countries to manipulate trade through local content and minimum export rules. However, coverage of the agreement is incomplete, and transitional provisions encourage, but do not require users of TRIMs to apply them in a non-discriminatory manner while they are being phased out.

U.S. automotive producers have major investment positions in many developing foreign markets. As such, our industry is heavily at risk of discrimination in application of performance requirements whenever new competitors (mostly European or Japanese) enter these markets.

**MEMA therefore asks Congress to monitor closely implementation of the TRIMs agreement by mandating, in U.S. implementing legislation, an annual Commerce Department review and congressional report on this subject. In addition, we ask that Congress clearly signal its intent to seek official U.S. redress in any cases where discrimination occurs.**

#### **Trade-Related Aspects of Intellectual Property Rights (TRIPs)**

MEMA has been most interested in the TRIPs agreement's treatment of industrial design and trademark protection. We believe this agreement would improve international protection of U.S. trademarks, principally through provisions establishing GATT rules on: a) minimum terms for initial and subsequent trademark registration; and b) trademark use requirements to maintain validity.

Of particular importance to MEMA members serving the replacement parts market, the agreement does not require the United States to amend its current law on industrial designs. Certain proposals before the GATT during the negotiations could have forced changes in U.S. law that would have severely harmed U.S. producers serving the independent aftermarket. The agreement avoids such an outcome by simply requiring

GATT members to provide some form of protection for industrial designs for a minimum term.

### **Agreement on GATT Article VI (Antidumping)**

With respect to antidumping, MEMA's goal in the Uruguay Round was to improve, clarify and expand the existing GATT Antidumping Code. We sought improvements in minimum procedural standards of the existing Code, including greater transparency in foreign dumping investigations and new provisions on anti-circumvention of dumping determinations. We also sought substantive clarifications to certain provisions of the Code to ensure effective relief from injurious dumping under U.S. law.

The Uruguay Round dumping text represents a step forward in the area of improving transparency in international rules for handling dumping cases. The agreement should provide U.S. parts manufacturers with better legal protection in foreign antidumping proceedings, a minor but growing concern to our industry.

In other respects, the Uruguay Round text on dumping appears to have made progress mostly in a defensive sense; that is, U.S. negotiators were able to prevail with our trading partners to preserve (with or without modifications) some key concepts and elements of current U.S. law and practice in the areas of anti-circumvention, definition of the "domestic industry", and cumulation of the effects of dumped imports from all sources in injury determinations.

In the process of negotiating the final provisions, however, U.S. negotiators may have acquiesced to a shift in the procedural, and thus financial, burden from those charged with injurious dumping to those U.S. parties making the dumping allegation. MEMA urges Congress to adopt the recommendations contained in Appendix I to this testimony in order to minimize the chance that the GATT dumping text could lead to a substantial diminishing of the rights of domestic industries under U.S. law.

### **Agreement on Dispute Settlement**

The U.S. government gave high priority to establishment of a dispute settlement body within the World Trade Organization (WTO) to operate a new, much stronger and efficient dispute settlement process. In concept, MEMA supported this objective, but cautioned against U.S. acceptance of new constraints on its ability to act unilaterally, particularly under Section 301 of the Trade Act.

Under the proposed new dispute settlement structure, there would be two types of cases: 1) those subject to WTO oversight, in which the U.S. and other WTO members would refrain from taking unilateral action; and 2) those beyond the scope of WTO oversight, in which we and others would have much greater freedom of independent action.

MEMA is concerned that the GATT dispute settlement text could hinder the use of Section 301 in opening foreign markets closed by anti-competitive practices, for which the GATT provides no effective alternative remedies. Of special concern to our industry is the potential for undermining the 1988 Trade Act amendment to Section 301 which permits U.S. retaliation against a foreign government's toleration of unfair practices, rather than simply against government practices alone.

For this reason, MEMA strongly supports the insertion of language in U.S. legislation implementing the GATT Uruguay Round agreement which would clarify Congress' intent that the U.S. maintains its rights to act unilaterally if a foreign act, policy or practice, while not violating a specific WTO agreement, burdens or restricts U.S. commerce.

### **World Trade Organization**

This text establishes the World Trade Organization as a new institutional framework responsible for implementation of the 1994 GATT Uruguay Round agreements and understandings, and for coordination of future multilateral trade negotiations.

MEMA, while having important concerns about the operation of the new dispute settlement provisions for the WTO, believes this agreement may be one of the most important results of the Uruguay Round. This view is based on the fact that the WTO will require all members who accede to this agreement to accept the full obligations as well as the benefits of the Uruguay Round. Waivers to this principle will be permitted only selectively after a stringent review and approval process of the WTO governing bodies.

To the extent that most major U.S. trading partners become members of the WTO, this new body will help reduce a major shortcoming of the 1947 GATT Agreement, namely "free ridership" for most developing and some industrialized nations. MEMA thus recommends that Congress voice its strong support for Administration efforts to ensure that all major U.S. trading partners join the new WTO no later than its proposed July 1, 1995 effective date.

### **Agreement on GATT Article XIX (Safeguards)**

MEMA gives mixed reviews to the Uruguay Round text on safeguards. On the positive side, the text would require GATT members to apply safeguard measures only if they determine imports cause or threaten to cause "serious injury" to a domestic industry. This is language equivalent to Section 201 of the U.S. Trade Act and is fully acceptable to our industry.

Our concerns with this agreement relate to its provision "grandfathering" the recent Japan-EC agreement limiting exports of Japanese automobiles into the European Communities. While the U.S. would have a similar right to impose one "gray area" measure, there is no assurance that the U.S. government will be inclined or able to negotiate such an agreement with Japan on auto exports to the United States. This situation could lead to a diversion of trade to the U.S. market, particularly if the present dollar/yen exchange rate situation later shifts in favor of Japanese industry.

An alternative which MEMA supports is to ensure that the U.S. and Japan reach a viable "Framework" agreement this year that will lead to a more balanced bilateral automotive trade situation as the 1990s proceed. Absent such an agreement, a new U.S.-Japan restraint arrangement may become necessary to ensure that excess capacity pressures in Japan and Europe are not shifted unfairly to the U.S. market.

### **Agreement on GATT Article XVIII (Balance of Payments)**

MEMA had two primary goals in negotiations to tighten GATT control over developing countries' use of balance of payments restrictions: 1) to discourage improper use of balance of payments restrictions to disguise "infant industry" development programs in the automotive sector; and 2) to require developing countries to announce timetables for removing balance of payments restrictions as soon as possible following their imposition.

We believe the latter goal was largely achieved in the Uruguay Round, and trust the U.S. government will work to ensure that the agreement is implemented in a way that addresses the first objective in a meaningful way. A more rigorous GATT/WTO review process is established which provides a stronger mechanism to achieve that goal. However, because the text provides only loose rules related to enforcement of future abuses of balance of payments waivers, MEMA is not optimistic about the U.S.



government's ability to achieve this goal. As such, the practical impact of this agreement on our industry may be minimal.

### **Agreement on Rules of Origin**

MEMA supports this agreement, which defines general principles for application of preferential rules of origin and a joint GATT/Customs Cooperation Council workplan for harmonization of non-preferential rules of origin. Our primary objective in these negotiations was to ensure maximum consistency in the GATT text with our industry's efforts to develop strong, value-content based preferential rules of origin in the North American Free Trade Agreement. This goal was achieved.

### **Conclusion**

Like past GATT rounds, the Uruguay Round agreement includes a number of potentially important procedural reforms, the impacts of which are difficult to predict, especially at the individual industry level. As such, MEMA focused most attention on the market access negotiations, which to date have made only modest and uneven progress. We also sought to ensure that the effectiveness of U.S. trade laws as potential tools for our industry would not be undermined by the GATT Uruguay Round. We have some important remaining concerns in this area.

MEMA asks that this Subcommittee and the entire Congress join us in urging that special efforts be made in ongoing market access negotiations with Korea and the ASEANs, as well as Turkey, to gain more reciprocal concessions that will improve U.S. export opportunities.

In addition, we urge congressional support, through implementing legislation, to minimize the potentially adverse impacts of the Uruguay Round agreements on the ability of industries such as our own to make effective use of U.S. unfair trading laws.

Finally, MEMA proposes that Congress include in implementing legislation an annual Commerce Department reporting requirement on the TRIMs agreement to monitor and encourage its effective implementation. Such a report also will serve as a benchmark for the mandated five-year GATT/WTO review of the TRIMs agreement.

Thank you for your attention to these important matters.

## APPENDIX I

ANTIDUMPING--RECOMMENDATIONS FOR IMPLEMENTING LEGISLATION  
SUBMITTED BY SIX ISAC 16 MEMBERS

Four motor vehicle parts manufacturer representatives and two automobile manufacturers recommend the following with regard to the GATT agreement implementing legislation text concerning antidumping.

1. Sunset. The provision will terminate dumping orders after five years. The text does not clearly place the burden on respondents to prove that the order should be revoked. It is clearly a dilution of the current law, where there is no automatic cut-off, but rather is based on no dumping following three reviews and no threat of continued dumping. Implementing legislation should:

a) Specify that the Administering Authority shall accord domestic industry full cooperation and all reasonable assistance, including input in composition of a broad-ranging questionnaire, and provide that responses to requests for information shall be considered only to the extent that all information submitted is verified as accurate.

b) Confirm that U.S. price averaging and the new de minimis margin standard are not applicable.

c) Provide that transition rules applicable to existing antidumping orders shall not abridge the five-year period during which such orders may remain in effect following accession to the Agreement.

d) Provide that, in evaluating the likelihood of continued or resumed dumping or injury, relevant considerations shall include acknowledgment that an existing antidumping measure acts as an artificial constraint with inhibiting or distorting effects on pricing, production, and the marketing strategies of firms subject to it. In this respect, provide for the operation of certain rebuttable presumptions, for example:

i) Where dumping is found to continue, such dumping may be presumed to exert a suppressing or depressing impact on prices;

ii) Where imports have declined to negligible or nonexistent levels under an existing order, it may be presumed that any recurrence or resurgence would involve both dumped and injurious imports.

iii) Confirm that continuation or recurrence of dumping shall be presumed where dumping has been found in any of the last three administrative reviews preceding the sunset review.

iv) Confirm that continuation or recurrence of injury shall be presumed absent: a substantial change in circumstances that is unrelated to the imposition of the antidumping duty order. The fact that dumping margins have declined, that imports have declined, that imports have been redirected to other regions, or that the health of the domestic industry has improved are circumstances that generally result from antidumping orders.

e) Provide that orders outstanding as of July 1995 shall be deemed to have been imposed as of July 1995 and shall not be terminated pursuant to the new sunset provision any sooner than July 2000.

f) Give domestic industries five years from imposition (until July 2000 for orders in effect as of July 1995), to request reviews.

g) Confirm that the new Code requirements for filing petitions "by or on behalf of the domestic industry" shall only apply to the filing of new petitions and not to requests for sunset reviews.

h) Provide that the ITC shall initiate sunset reviews upon the receipt of letters from domestic producers, thereby eliminating the expense to the domestic industry of filing lengthy petitions with supporting documentation.

i) Confirm that antidumping duty orders remain in effect pending review, including judicial review of any negative determinations, and until all antidumping duties have been levied and collected through the date of any final negative review determination.

2. Start-up Costs. The provision states that the costs at the end of the start-up period are to be used in dumping calculations. The result is that in industries with prices that decline rapidly it would mean that no dumping would be found even where prices were always lower than costs. Implementing language should properly define start-up costs as ending when a product goes into commercial production.

3. Termination of Investigations. The provision changes the *de minimis* level from 0.5% to 2%. This is a four-fold weakening of current U.S. law. Implementing language should specifically limit this change to original investigations, and assure that it is not applicable to administrative reviews.

4. Circumvention. Although the text is currently silent, the U.S. should attempt to remove discretion from the current statute; i.e., if there is evidence of circumvention, Commerce should be required to eliminate it.

5. Profits for Constructed Value. The text eliminates the current U.S. practice of adding 8% profit, and 10% minimum GSA. Margins will likely be lower because of this change. It is essential that the U.S. implementing legislation specify that reliance on product-specific



expense and profit experience be expressly limited to expenses and profit associated with home market sales "in the ordinary course of trade." That is, no consideration should be given to "profit" (i.e., losses) attributable to sales below cost, regardless of the expense/profit alternative being applied. Moreover, under no circumstances should the "reasonable amount...for profits" be construed to be less than the amount necessary to cover the costs of capital after accounting for "the cost of products...plus a reasonable amount for administrative, selling and any other costs."

6. Evidence from Industrial Users and Consumers. The new Code requires the ITC and Commerce to consider consumer interests or other "public interest" concerns in evaluating injury and dumping. This is a major change from current law. Implementing legislation should preclude the ITC and Commerce from considering the impact of dumping duties on industrial users and consumer organization in evaluating dumping, injury and causality. These entities should be permitted to provide information, but only information that is relevant to the existing injury criteria.

7. Price Averaging. The new Code would require a dumping margin to be based on a comparison of a weighted average fair market value (FMV) to a weighted average U.S. price or on a comparison of FMV and U.S. price on a transaction-to-transaction basis. The implementing legislation should confirm that the change does not apply to administrative reviews.

8. Dispute Settlement. The new Code makes determinations of dispute panels binding on the losing country in dumping cases. The implementing language should:

- a) Clarify that the ITC and Commerce should be given an opportunity to correct any flaws in their decisions found by the GATT panels without necessarily invalidating the resulting antidumping orders.
- b) Retain for Congress the responsibility of implementing GATT panel decisions that would require the termination of an outstanding order.
- c) Confirm current U.S. law that GATT panel decisions do not supersede U.S. law and have no precedential value for the interpretation of U.S. law by the ITC, Commerce and the U.S. courts. Our laws should be amended by Congress, not GATT dispute settlement panels.
- d) Authorize the petitioners to participate in the GATT process.

9. Standing. The Agreement requires that the industry be polled prior to initiation of a case. Legislation should require that opposition from companies that import the product subject to the investigation or are related to respondents be disregarded when determining whether the domestic industry supports a petition.

Chairman GIBBONS. Good. We always appreciate working with you.

Mr. Kadrach.

**STATEMENT OF LEE KADRICH, DIRECTOR OF GOVERNMENT AFFAIRS AND INTERNATIONAL TRADE, AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION, INC.**

Mr. KADRICH. Thank you, Mr. Chairman.

I would like to say, too, we very much appreciate all that was done by you in NAFTA, and I feel we are on a market opening roll now. We welcome this opportunity for APAA to express its support for the new GATT as an important, albeit limited, protrade accomplishment.

As the world's most competitive parts suppliers, U.S. firms had high hopes for a procompetition GATT that would open the world of export opportunities to our world class products.

Our recommendations to Congress and the administration toward meeting that goal include: Implementing legislation that preserves section 301 as our key tool to penetrate Japan's invisible market barriers; a mandate for continued negotiations to remove high parts and vehicle tariff barriers; and provisions to maintain strong U.S. trade remedies. Our views on GATT's accomplishments and shortcomings are generally reflected quite fully in ISAC 16's report to the committee.

Through open U.S. market competition, our industry firms have grown into a \$160 billion per year American industry, employing 2 million American workers in producing and delivering the world's finest aftermarket parts and service to consumers nationwide.

Export market opening now holds the key to future growth and strength in sales and jobs for our companies, workers, and the economy. However, before tackling our protrade GATT agenda, we first had to resist efforts by some who wanted to exploit our Nation's avid pursuit of a GATT as a means to change U.S. industrial design protection law, in a manner that really would have devastated the very market competition that has made our vehicle parts aftermarket the world's best for producers, sellers, and consumers.

The issue of whether or not there should be increased protections for industrial designs beyond those already provided by U.S. law has been controversial for many years. Indeed, while the issue has been debated in Congress for years, Congress wisely has refused to yield to those who argue for overly broad design protection, and no such legislation is even before this session of Congress.

Alert to the potential for a back door assault, APAA and its allies in industry and Congress warned against allowing the GATT and similar treaty negotiations to be manipulated to force Congress to pass design protection laws it otherwise has rejected. The Bush administration committed to negotiate a provision in GATT that would not force Congress' hand, and APAA is pleased that the Clinton administration continued that commitment and negotiated an industrial design protection provision that does not require any change in U.S. law.

While pleased that the new WTO will end free ridership of parties currently enjoying a la carte adherence to GATT agreements,

APAA is very concerned about its impact on section 301. We fear the agreement could impair section 301's use in opening markets closed by anticompetitive practices for which GATT provides no alternative effective remedies. We can't afford to risk any undermining of specific 1988 Trade Act amendments to section 301 that permit retaliation against government-tolerated anticompetitive systems blocking U.S. trade. The 1988 Trade Act conference report clearly intended this provision to benefit auto parts market opening efforts.

APAA believes, Mr. Chairman, that Japanese Government-tolerated anticompetitive practices pose invisible barriers, holding U.S. parts exports to less than 1 percent of Japan's home market, and that is the same U.S. share that our firms held before Japan in 1981 lowered their parts tariffs to zero. We also contend that existing section 301 was a vital factor in our industry's efforts leading up to the current round of results-oriented negotiations on auto parts trade. A strong section 301 law is vital both for enforcing any agreements reached or for unilateral action taken absent an agreement.

We urge that implementing legislation at a minimum assure that in areas not subject to GATT/WTO disciplines, the United States maintain its right to act unilaterally if an act, policy or practice of a foreign country burdens or restricts U.S. commerce, even though it violates no specific agreement.

APAA sought harmonization of industrialized parts and car tariffs at a reduced U.S. rate of 2 percent and substantial lowering and binding of tariffs by developing countries and newly industrialized countries subject to appropriate transitions.

We are very disappointed, as Mr. Bates indicated as well, by the relatively meager results secured by our negotiators prior to December 15, and we urge Congress to direct them back to the negotiating table to secure more parts and vehicle tariff cuts.

While progress was made in narrowing parts tariff gaps with the EC, little was secured in the parts tariff cuts from ASEAN and other emerging parts and vehicle producing countries.

Our car tariff cut results are also very disappointing, as are the failed negotiations to slash trade partners' medium- and heavy-duty truck tariffs. Without foreign market access, U.S.-owned truckmakers cannot achieve the production volumes needed to compete with European and Japanese firms. APAA fears, Mr. Chairman, that U.S. truck producers will be forced to move their production behind the high European tariff walls to serve that market. This will come at a staggering cost to U.S. suppliers, workers, and the economy.

It will be very frustrating, indeed, for U.S. companies if they—Chairman GIBBONS. May I ask were we willing to give up that 25 percent tariff we have?

Mr. KADRICH. Well, this was on medium- and heavy-duty trucks, sir.

Chairman GIBBONS. It wasn't on light trucks.

Mr. KADRICH. On light trucks, no. It was our position to hold firm on that. We did have a proposal, though. Our industry supported a proposal to harmonize the medium and heavy trucks at 4 percent, but we didn't even get anything near that from the Eu-



ropeans. The offer from the Europeans, as I recall, is to lower from 22 to 19 percent on the trucks and I think from roughly 19 to 16 percent on the tractors.

Chairman GIBBONS. Well, as long as we can insist on 25 percent on the light trucks, they are not going to give us anything. You got to give in order to get in this world.

Go ahead.

Mr. KADRIC. As I was saying, it will be very frustrating for U.S. companies if they have to accept meager market opening accomplishments at the trade table after waiting 7 years, while their competitors abroad continue to enjoy such open access to our huge market.

If tariff cuts are to provide benefit, we also must remove or limit domestic content, trade balancing, and other nontariff barriers blocking U.S.-made cars and parts. I think the key here is to use NAFTA, which we think is tremendous in its staged removal of Mexican trade balancing and content mandates, as the standard for our talks with other countries.

The TRIMs agreement provides a modest start toward that objective, but its impact will hinge on the will of U.S. negotiators to press further concessions and compliance.

Finally, as a member of the Committee to Support U.S. Trade Laws, APAA believes the administration and Congress can draft GATT-consistent implementing legislation that provides effective antidumping relief. These provisions must minimize the negative effects of necessary changes while maximizing beneficial provisions not currently in our law and other proactive measures not barred by GATT.

We look forward to working with you, Mr. Chairman, and Congress and the administration toward completing a GATT and enacting implementing legislation more fully reflective of APAA's procompetition, protrade objectives for the Uruguay round.

Thank you very much.

[The prepared statement follows:]

**LEE KADRICH**  
**AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION, INC.**

Mr. Chairman and Members of the Subcommittee:

APAA welcomes this opportunity to voice our support for the new GATT Agreement as an important, albeit limited, pro-trade accomplishment. As the world's most competitive parts suppliers, U.S. firms had high hopes for a pro-competition GATT Agreement that would open the world of export opportunity to our worldclass products.

Our recommendations to Congress and the Administration towards meeting that goal include: implementing legislation that preserves Section 301 as our key tool to penetrate Japan's invisible barriers; a mandate for continued negotiations to remove high parts and vehicle tariff barriers; and provisions to maintain strong U.S. trade remedies. Our views on GATT's accomplishments and shortcomings are amplified in APAA's full statement and generally reflected in ISAC 16's report to Congress.

Through open U.S. market competition, our industry firms have grown into a \$160 billion per year American industry, employing two million Americans in producing and delivering the world's finest aftermarket parts and service to consumers nationwide.

Export market opening holds the key to future growth and strength in sales and jobs for our companies, industry and the economy. However, before tackling our pro-trade GATT agenda, we first had to resist efforts by some to exploit our nation's avid pursuit of a GATT agreement as a means to change U.S. industrial design protection law, in a manner that could devastate the very market competition that has made our vehicle parts aftermarket the world's best for producers, sellers and consumers.

The issue of whether or not there should be increased protections for industrial designs beyond those already provided by U.S. law has been controversial for many years. Indeed, while the issue has been debated in Congress for years, Congress wisely has refused to yield to those who argue for overly broad design protection, and no such legislation is even before this session of Congress.

Alert to the potential for a back door assault, APAA and its allies in industry and Congress warned against allowing the GATT Round and similar treaty negotiations to be manipulated to force Congress to pass design protection laws it otherwise has rejected. The Bush Administration committed to negotiate a provision in GATT that would not force Congress' hand. APAA is pleased that the Clinton Administration continued that commitment, and negotiated an industrial design protection provision that does not require any change in United States law.

While pleased that the new WTO will end "free ridership" of parties currently enjoying a la carte adherence to GATT agreements, we are very concerned about its impact on Section 301 law. We fear the Agreement could impair Section 301's use in opening markets closed by anticompetitive practices, for which GATT provides no alternative remedies. We cannot afford to risk any undermining of specific 1988 trade act amendments to Section 301 permitting retaliation against government tolerated anticompetitive systems blocking U.S. trade. The 1988 trade act conference report clearly intended this provision to benefit auto parts market opening efforts.

APAA believes Japanese government tolerated anticompetitive practices pose invisible barriers, holding U.S. parts exports to less than 1% of Japan's home market--the same share U.S. firms held before Japan's 1981 lowering of parts tariffs to zero. We also contend that existing Section 301 was a vital factor in our industry's efforts leading up to the current results-oriented negotiations with Japan on auto parts and auto trade. A strong

Section 301 law is vital both for enforcing any agreements reached or for unilateral action taken absent an agreement.

We urge that implementing legislation at a minimum assure that in areas not subject to GATT/WTO discipline, the U.S. maintains its right to act unilaterally, if an act, policy or practice of a foreign country burdens or restricts U.S. commerce, even though it violates no specific GATT/WTO agreement.

APAA sought harmonization of industrialized nations' parts and car tariffs at a reduced U.S. rate of 2.0%, and substantial lowering and binding of tariffs by DC's and NIC's subject to appropriate transition periods.

We are very disappointed by the relatively meager results secured by our negotiators prior to December 15th and we urge Congress to direct them back to the table to secure more parts and vehicle tariff cuts prior to the February 15th deadline.

While progress was made in narrowing parts tariff gaps with the EC, Australia and Korea, little was secured in parts tariff cuts from ASEAN and other emerging parts and vehicle producing countries.

Car tariff cutting results also are disappointing, as are the failed negotiations to slash trade partners' medium-and heavy-duty truck tariffs. Without foreign market access, U.S. owned truck makers cannot achieve production volumes needed to compete with European and Japanese firms. APAA fears U.S. truck producers will be forced to move production behind Europe's high tariff walls to serve the closed market, at a staggering cost to U.S. suppliers, workers, and the economy.

It will be very frustrating for U.S. companies if they have to accept meager market opening accomplishments at the trade table after seven years of waiting, while their competitors abroad continue to enjoy such open access to our vast U.S. market.

If tariff cuts are to have an impact, we also must remove, or limit, domestic content, trade balancing and other nontariff barriers blocking U.S. made cars and parts. The fact that 70% of U.S. parts exports return to the U.S. on Canadian and Mexican assembled cars--due to their trade balancing rules--underscores the global market opening need. Competitive U.S. suppliers must be free to export parts to countries where cars are built for sale in that market or for export to third markets--thus building global sales potential for U.S. replacement parts exports.

NAFTA's staged removal of Mexican trade balancing/content mandates should set the standard for talks with other nations. The TRIM's agreement provides a modest start towards that objective, but its impact will hinge on the will of U.S. negotiators to press further concessions and compliance.

As a member of the Committee to Support U.S. Trade Laws, APAA believes the Administration and Congress can draft GATT-consistent implementing legislation that provides effective antidumping remedies. These provisions must minimize the negative effect of necessary changes while maximizing beneficial provisions not in current law and other pro-active measures not barred by GATT. Elimination of incentives for avoidance of antidumping duties through diversion or circumvention and other measures enumerated in our statement would maintain meaningful relief.

APAA looks forward to working with Congress and the Administration towards completion of a GATT Agreement and enactment of implementing legislation more fully reflective of APAA's pro-competition, pro-trade objectives for the Uruguay Round.



Chairman GIBBONS. Thank you.

Now let us go to Rubber and Plastic Footwear Manufacturers Association, Mr. Cooper.

**STATEMENT OF MITCHELL J. COOPER, COUNSEL, RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION**

Mr. COOPER. Thank you, Mr. Chairman.

I am, as I think you know, counsel to the Rubber and Plastic Footwear Manufacturers Association.

Chairman GIBBONS. Yes, sir.

Mr. COOPER. This association is the spokesman for manufacturers of most of the waterproof footwear, rubber-soled fabric upper footwear, and slippers produced in this country.

Although we realize that there are aspects of the Uruguay round's market access agreement which remain to be negotiated, we have been assured that there will be no change in the footwear offer made by the United States. On that assurance, I am happy to say that it is the view of the RPFMA that Congress should look favorably on the outcome of this round. In taking this view, we should note that the rubber footwear and slipper manufacturers for whom we speak are the principal domestic producers in a labor-intensive, import-sensitive industry whose primary concern has been that imports from low-wage countries not be permitted to overwhelm what is left of our domestic market. For the most recent quarter reported by the International Trade Commission, imports of fabric upper footwear took 83 percent of this market, and imports of waterproof footwear took 44 percent. The ability of producers in countries such as China, Korea, Indonesia, and Thailand to undersell U.S. producers in other countries has limited the export potential of this industry. Consequently, our focus on the Uruguay round has been limited to efforts to prevent reduction of U.S. footwear and slipper tariffs.

Over the past 7 years, the government, more particularly the Office of the Trade Representative and the Department of Commerce, has devoted a great deal of time to a consideration of the relative perils and benefits of tariff cuts in the 106 rubber and nonrubber footwear harmonized system classifications. The result has been offers of substantial Uruguay round cuts in 36 categories, including the total elimination of duties in 15, but the retention of existing duties in the 70 categories of most vital importance to the domestic industry. In the Uruguay round, as was true in the Kennedy and Tokyo rounds, American negotiators acted with responsible caution, so that what remains of this domestic industry has a reasonable chance for continued survival.

Surely, we would have preferred it if all 106 footwear categories were left untouched, but that was not to be, and the resulting agreement is far better than the trade anarchy and the rush to regional free trade agreements which would have been the alternative. Accordingly, we have no hesitation in asking the Congress to endorse the outcome of the Uruguay round.

The restraint shown by the Uruguay round negotiators, as well as by the NAFTA negotiators of a 15-year phaseout and 55-percent local content requirement for rubber footwear and slippers coming from Mexico, provide a worthy contrast to the impact on this indus-

try of instant duty-free treatment of footwear from the Caribbean. The Trade Act of 1990 eliminated the exemption from duty-free treatment for Caribbean footwear made with American components. Since the implementation of that provision, rubber footwear imports from the Dominican Republic alone have increased by well over 400 percent at the direct expense of domestic manufacturers and employees. We previously advised this subcommittee of two major companies which closed its plants in Ohio and Georgia and promptly expanded its plants in Honduras and the Dominican Republic. Recently, a major slipper producer closed its operations in Pennsylvania and opened in the Dominican Republic, and another slipper company slashed its orders from a Maine manufacturer and has begun production in the Dominican Republic.

We mention the CBI problem at this time to stress the significance of the care taken by the government in dealing with rubber footwear and slipper tariffs in the Uruguay round, but as important as is your consideration of the impact of the Uruguay round agreements, we hope that this committee will also find the time to consider H.R. 795 and/or H.R. 2322, bills designed to soften the devastating impact CBI instant duty-free treatment has had on American manufacturers of rubber footwear and slippers.

In closing, Mr. Chairman, I should take note that all of the discussion this afternoon of possible parity of CBI with Mexico, if it were to become a reality, would be preferable, and I am not taking a position on CBI parity, but certainly it would be far preferable to the present position. In point of fact, Mexico is far short of parity with the Caribbean.

I am concerned that, while in the best of good faith, certainly, the Congress adopted the end of the exemption from duty-free treatment from the Caribbean experience with that measure in the past 2 years has, I am sorry to say, borne out the prediction of what I said would happen. I do hope that, as we take a look at the total complex of trade negotiations, you will bear in mind that this is an industry which, while hurt to some degree by the Uruguay round, approves of its outcome: while troubled by the fact that eventually we will lose all duties in NAFTA, we took no position on NAFTA, neither in favor nor opposed, because the industry does see some possibility of opening a market in Mexico with the elimination of Mexican duties, although it is also concerned that it may in part have to eventually shift some of its production to Mexico.

We see none of these advantages from the present situation in the Caribbean, and we do see a further erosion of our domestic base because of what has happened in the Caribbean. We hope that there will be some reconsideration of that.

Thank you, sir.

[An attachment to Mr. Cooper's statement follows:]

## APPENDIX I

RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION  
(January 26, 1994)

American Steel Toe Co.  
P.O. Box 959  
S. Lynnfield, MA 01940-0959

Converse, Inc.  
One Fordham Road  
North Reading, MA 01864

Draper Knitting Co., Inc.  
28 Draper Lane  
Canton, MA 02134

Frank C. Meyer Co.  
585 South Union Street  
Lawrence, MA 01843

Genfoot America, Inc.  
The Old South Building  
11th Floor  
294 Washington Street  
Boston, MA 20108-4675

Gitto Global Corp.  
140 Leominster-Shirley Road  
Gianna Park, P.O. Box 318  
Lunenburg, MA 01462

Kaufman Footwear Corporation  
700 Alicott Street  
Batavia, NY 14020

Kaumagraph, Inc.  
P.O. Box 632  
525 W. South Street  
Kennett Square, PA 19348

Kaysam Corporation of America  
27 Kentucky Avenue  
Paterson, NJ 07503-2597

LaCrosse Footwear, Inc.  
P.O. Box 1328  
LaCrosse, WI 54602-1328

New Balance Athletic Shoe, Inc.  
38 Everett Street  
Allston, MA 02134

Norcross Footwear, Inc.  
9300 Shelbyville Road  
Suite 300  
Louisville, KY 40222

S. Goldberg & Co., Inc.  
20 East Broadway  
Hackensack, NJ 07601-6892

Ranger Footwear  
One Marine Midland Plaza  
6th Floor  
West Tower  
Binghampton, NY 13760

Servus Rubber Co., Inc.  
P.O. Box 36  
Rock Island, IL 612204-0036

Spartech Franklin  
113 Passaic Avenue  
Kearney, NJ 07032

Supreme Slipper Manufacturing  
Company, Inc.  
P.O. Box 1376  
Lewiston, ME 04240

Tingley Rubber Corporation  
P.O. Box 100  
S. Plainfield, NJ 07080



Chairman GIBBONS. Mr. Kadrach, Congressman Levin has proposed that reauthorization of an auto parts advisory committee [APAC] to report to and work with the Department of Commerce on expanded trade in auto parts be included in the fast track legislation. Does your association support this proposal?

Mr. KADRICH. We absolutely would support that. Yes, Mr. Chairman. In fact, I am a member of the APAC.

Mr. BATES. We would support that as well.

Chairman GIBBONS. All right. Perhaps you could explain to me how the committee has contributed to the trade policymaking procedures in the past.

Mr. BATES. I think it has had a very significant impact in that it has laid out the issues very clearly. It provided major backup to President Bush's trip to Japan. It has done the thing that is most needed in our view, which is to keep political focus on a longstanding trade problem with Japan, one which cannot be resolved without continued efforts by both industry and government working in tandem on both sides of the Pacific. We feel that it is critical at this juncture with the framework negotiations underway that we have this unifying mechanism to provide advice to the administration backed with full authorization by the U.S. Congress.

Mr. KADRICH. If I could just add to that, Mr. Chairman, in terms of the new results-oriented talks, I believe it was APAC's work that really provided the impetus for getting auto parts a prominent place on that agenda. APAC provided the administration with very specific recommendations for the kinds of goals, timetables, and monitoring that we would need in order to have any kind of effective or successful negotiated outcome as defined by our industry. So I think that was a very important contribution as well.

Chairman GIBBONS. All right. Well, I thank all of you for coming and for being so patient and providing us the testimony here today.

Now we go to the Sierra Club, Mr. Housman; Public Citizen, Lori Wallach; and Friends of the Earth, Andrea Durbin.

Robert, at the risk of being declared sexist, I am going to let you go first. My apologies to the two ladies, but I didn't make up this schedule.

**STATEMENT OF ROBERT HOUSMAN, STAFF ATTORNEY,  
CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, AND  
ADJUNCT PROFESSOR OF LAW, AMERICAN UNIVERSITY,  
WASHINGTON COLLEGE OF LAW, ON BEHALF OF THE  
SIERRA CLUB**

Mr. HOUSMAN. Thank you, Chairman Gibbons, for the opportunity to appear before you today to discuss the environmental ramifications of the Uruguay round's Final Agreement.

My name is Robert Housman. I am an attorney with the Center for International Environmental Law. I appear today on behalf of the Sierra Club. Our testimony has also been endorsed by Defenders of Wildlife.

I would like to place our full testimony in the record—

Chairman GIBBONS. Certainly.

Mr. HOUSMAN [continuing]. Reserving the right to amend it to include the Defenders' endorsement if I can.

Chairman GIBBONS. All right. Fine.

Mr. HOUSMAN. Thank you, Mr. Chairman.

The issue here isn't whether free trade is good or bad. Nor is the issue even whether free trade is good or bad for the environment. Indeed, under the proper circumstances, trade can be environmentally beneficial. The only issue here today is whether or not the Final Agreement of the Uruguay round is good for the environment.

We have a two-part test to make this determination. First, the agreement must stand up to the basic principles of democracy. Second, the agreement must promote environmentally sustainable development. Specifically, it must not endanger our high U.S. environmental, health, and safety laws, and it must protect the environment from unfair international competition on the basis of lax environmental standards or the overexploitation of natural resources.

Now, Mr. Chairman, you may experience a certain sense of *deja vu* as you listen to some of our remarks. Environmentalists raised similar concerns during the NAFTA process. Regardless of how you voted on the NAFTA or any other potential differences, I would urge you to take a close look at the Final Agreement. Environmentalists are unanimous in their concerns over its potential effects on both democracy and sustainable development.

Our first test is: Does the Final Agreement promote democracy? We believe the agreement falls short here. For example, the Final Agreement would deny citizens not only the right to participate in disputes concerning environmental, health, and safety laws, but it also would deny them the right to have information about disputes concerning these laws. We fear that if the Final Agreement is approved, trade panels will sit in secret judgment over the democratically enacted environmental health and safety laws of the United States and other nations.

When democratic practices are eroded by international agreements, the lawmaking function exercised by elected legislatures like Congress and yourself is weakened. We urge the subcommittee to pay careful attention to this issue throughout its consideration of the agreement.

Our second test is environmental sustainability, and this test itself has two parts. First, the agreement must not endanger our high U.S. standards. Regrettably, we feel the agreement is replete with provisions that may do just that. For example, both the Sanitary and Phytosanitary, SPS, and Technical Barriers to Trade, TBT, texts would require our laws to be least-trade restrictive. In other words, if a trade panel with no environmental expertise or public participation, but with the benefit of hindsight and free of the real world pressures, political and social, that you legislators must endure, believes that they can conceive of another less trade-restrictive way of protecting the environment, our standard may be in jeopardy.

The agreement would also require the United States to use international standards, which are generally lower than ours, as the point of departure in setting our own standards. We also believe the TBT rules on process standards could endanger such vital laws as the Driftnet Fisheries Enforcement Act and the Clean Air Act. Moreover, because the agreement requires the United States to



take efforts to bring State and local governments into compliance as well, these same provisions could seriously undermine State and local environmental efforts.

The threats here are also not limited to the national level. Unlike NAFTA, which protected to a limited degree international environmental agreements [IEAs], the Final Agreement affords IEAs no additional protection. Vital agreements like the Montreal Protocol on ozone depletion, the Basel Convention on transboundary movements of hazardous waste, and the Convention on International Trade in Endangered Species could be placed at serious risk.

These threats are real.

A brief survey by the Center for International Environmental Law found that there have been over 13 challenges or threatened challenges to U.S. environmental health and safety laws in just the last 3 years. Compare that to the number of challenges during this same period, even over beer, which has been a contentious trade issue, and the number of environmental challenges is daunting.

The second half of our environmental sustainability test is that the agreement must provide safeguards to ensure that expanded trade will be environmentally sustainable in nature. Here again, we feel the agreement comes up short.

Unlike the NAFTA, the Final Agreement fails to provide a mechanism to: One, ensure nations will not waive or lower their standards to encourage investment; two, ensure that the parties will enforce their laws; or, three, adopt new laws to address pressing threats.

Nor does the agreement give us the luxury of looking to some future trade and environment negotiation to solve these problems. The Final Agreement does not include the much heralded and promised "green round." Nor did the parties agree to a standing trade and environment committee within the World Trade Organization structure as a forum for beginning these discussions.

I want to emphasize, though, that the failure here is not the Clinton administration's fault. The burden must fall squarely upon our recalcitrant trading partners.

The Final Agreement did agree to a "work program" on trade and environment. While we are committed to working with the administration in its effort to use the work program to bring about the environmental reforms necessary, we have some serious concerns about the program's ability to further these reforms.

I would like to summarize these concerns in four simple questions. First, what will protect our laws during this potentially time-consuming process? Second, what lets us think that the other parties are willing to turn right around and reopen environmental issues closed by the round? Third, what inducements will be available to encourage other nations to negotiate expeditiously and in good faith on issues they refused to discuss during the round? Fourth, given that the work program does not even admit to the need for reform, how can we be sure that these efforts will be reformist and not regressive? Given its inherent limitations, I do not believe that the work program can be looked at as an environmental justification for adopting the Final Agreement.

In conclusion, for the past 3 years, the integration of trade and environmental issues has occupied a prominent place on our trade



agenda. Despite 3 years of intense efforts, the Congress has before it a Final Agreement that does not even attempt to integrate these issues. In fact, it provides a launching pad for a direct frontal assault on many of our environmental, health, and safety protections. While the failure of the current GATT to address environmental needs can be chalked up to benign neglect, there is no such justification for this agreement.

Not too long ago, I had the opportunity to hear a senior administration official make an impassioned plea for environmental support for the Uruguay round. The plea went that the round was necessary so that the Clinton administration can "stop painting the walls that other administrations have built and start building their own trade and environment framework." Unfortunately, the very architecture of the Final Agreement would appear to preclude erecting trade policies that support and not impede environmental, health, and safety protection. As a condition for congressional approval of the round, the administration must do more than offer a few splashes of green paint. It must articulate a plausible strategy for fostering sustainable development through expanded international free trade.

Thank you for this opportunity, Mr. Chairman.

[The prepared statement follows:]

Testimony of Robert Housman

of the Center for International Environmental Law

on Behalf of the Sierra Club

Before the Trade Subcommittee of the House Ways & Means Committee

February 2, 1994

Chairman Gibbons, Members of the Subcommittee, thank you for the opportunity to testify before you concerning the environmental ramifications of the Final Agreement (the Final Agreement or the Agreement)¹ of the Uruguay Round of the General Agreement on Tariffs and Trade (the GATT).² My name is Robert Housman. I am a Staff Attorney with the Center for International Environmental Law, and an Adjunct Professor of Law at the American University's Washington College of Law. I appear today on behalf of the Sierra Club.

Before moving to our analysis of the Final Agreement, I believe it is necessary to put the issue this hearing seeks to address in context. The issue here is not whether free trade is good or bad. We support the general principles of free and fair trade. Nor is the issue even whether free trade is good or bad for the environment. Indeed, under the right conditions, expanded trade and economic growth can be environmentally beneficial. The issue I will address today is whether or not this particular agreement—the Final Agreement of the Uruguay Round—is good for the environment. This question is vital because environmental degradation has real economic costs—both to public health and to natural resources—that can undermine the very benefits that expanded trade is intended to bring. Environmental degradation also has real costs in human terms—cancer, lung disease, hepatitis, food poisoning. These human costs lower our standards of living—precisely the opposite effect that economic growth through expanded trade is intended to have.

Within this context, the goal of my testimony today is to provide you "just the facts" while avoiding the rhetoric and hyperbole that has plagued past discussions over the environmental impacts of trade agreements.

#### **I. The Sierra Club's Standard for Judging the Final Agreement**

The Sierra Club believes that before the Final Agreement can be considered acceptable to the United States Congress and the American people it should pass two critical tests. First, the Agreement must be able to stand up to the basic principles of democracy. Second, the Agreement must promote environmentally sustainable development. Specifically, it must preserve our high U.S. environmental, health and safety standards and it must protect the global environment from unfair international competition on the basis of lax environmental standards and over-exploitation of natural resources. Unfortunately, based on the information now available to us, the Final Agreement fails both of these tests.

Many of you may experience a sense of *deja vu* as you listen to our remarks. Environmentalists raised similar concerns regarding the North American Free Trade Agreement (the NAFTA).³ Regardless of how you voted on the NAFTA, we urge you to take a close look at the Final Agreement. Environmentalists are in broad agreement that the Final Agreement is substantially more threatening to democratic processes and to sustainable development than the NAFTA.

#### **II. The Erosion of Democratic Practices**

Our first test is a simple one. The Final Agreement must promote democracy. This test requires that in order to pass muster the Final Agreement must provide citizens with the ability to have information about and participate in decisions that affect their interests. We believe the Final Agreement fails this test.

Democratic practices are essential to environmental protection because only free people can hold their governments accountable to pass good environmental, health and safety laws, to enforce those laws, and to build the necessary environmental infrastructure to complement those laws. Our experiences with the former authoritarian states of Central and Eastern Europe demonstrate the point.⁴ Moreover, as President Clinton recently recognized in his State of the Union address "democracies

¹Trade Negotiations Committee, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade negotiations, Dec. 15, 1993, MTN/FA, UR-93-02461 [hereinafter Final Agreement]. All citations to the various components of the Final Act in this testimony refer to this text.

²opened for signature Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187.

³North American Free Trade Agreement Between the Government of the United States, the Government of Canada, and the Government of the United Mexican States, Dec. 17, 1992, 32 I.L.M. 289, 605 (1993) [hereinafter NAFTA].

⁴See Chris A. Wold & Durwood Zaelke, *Promoting Sustainable Development in Central and Eastern Europe: The Role of the European Bank for Reconstruction and Development*, 7 Am. Univ. J. Int'l L. & Pol'y 559, 561 (1992) ("The state of the environment in Central and Eastern Europe is the epitaph of centrally planned economies

make the best trading partners." Yet, while we seem to recognize the value of democracy to both environmental protection and free and fair trade, we are rushing to establish an international trading system that weakens these very principles of democracy.

The most important democratic failures of the Final Agreement occur within its dispute resolution provisions.⁵ These provisions would provide the ground rules for deciding disputes that will arise concerning, among other things, U.S. environmental, health and safety laws. Under the Final Agreement's proposed rules citizens can neither appear before panels nor submit information to panels.⁶ The procedures at the appellate level are similarly undemocratic.⁷ The Final Agreement not only denies citizens the ability to participate in decisions, but it also denies them the right to have information about these decisions. For example, the Final Agreement explicitly prohibits members of the public from attending the hearings of dispute settlement panels or the standing appellate body.⁸ The Final Agreement also explicitly prohibits the public from having access to the pleadings of the parties to disputes.⁹

There are only two ways in which the public can cut through the Final Agreement's shroud of secrecy. First, a party may make its own submissions public, but in so doing it must protect the other party or parties' arguments.¹⁰ Operating under the current GATT, the United States Trade Representative (USTR) has repeatedly requested that other parties challenging U.S. environmental, health and safety make their briefs public. Not once has another party agreed to this request. There is no reason to believe that this pattern will change. USTR has made copies of redacted U.S. briefs available to the public in a number of cases.¹¹ While we appreciate USTR's efforts, our experience with these redacted briefs is that they are of little or no use. Imagine reading a baseball scorecard that only lists the performance of one of the two teams; there is no way to know who is playing and how the game is going.¹²

Second, a party may request that the other parties to a dispute make summaries of their submissions public.¹³ Here again our experiences do not bode well. For example, under the Pelosi Amendment governments who want a loan from a multilateral development bank must make a summary of an environmental assessment public, or by law the United States cannot vote in favor of the loan.¹⁴ The summaries that have been produced under the Pelosi Amendment for multi-million dollar mega-projects are often times little more than a page or two in length. We have no reason to believe that many of the same governments who supply these useless summaries will be more forthcoming in the trade context where the stakes in real dollars are much higher.

The inability of citizens to participate in, and have access to these panels both limits the work of citizens and nongovernmental organizations, and denies panels valuable expertise. This problem is compounded by the Final Agreement's failure to ensure environmental expertise in trade disputes over environmental, health, and safety standards. Even where the core issues in a

...").

⁵See generally, Final Agreement, Annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes, 1-25 [hereinafter Understanding on Dispute Settlement].

⁶Understanding on Dispute Settlement, supra note 5, at Appendix 3, art. 2.

⁷Id., at art. 17.10.

⁸See id., at art. 17.10; Appendix 3, art. 3.

⁹Id., at art. 18.2; Appendix 3, art. 3.

¹⁰Id.

¹¹See, e.g., USTR, Second Submission to the Panel on United States Taxes on Automobiles, Nov. 24, 1993 (public version); USTR, Rebuttal Submission of the United States to the Panel on United States - Restrictions on Imports of Tuna, undated (public version).

¹²For example, the redacted U.S. brief in the CAFE case begins:

5. [

] As addressed below, there is no support in the General Agreement for this theory.

See Second Submission to the Panel on United States Taxes on Automobiles, supra note 11, at 2 (brackets and spaces in the original).

¹³Understanding on Dispute Settlement, supra note 5, at Appendix 3, art. 3.

¹⁴22 U.S.C. § 262m-7.



dispute are environmental in nature, dispute panels would be made up of international trade experts.¹⁵ The makeup of these panels would create an inherent bias against environmental, health and safety standards. While the Final Agreement does provide that panels may if they wish seek outside expertise and information, this is merely recognition of the evolving practice under the current GATT and not a major substantive advance.¹⁶ The only new facet in the Final Agreement are the provisions in the TBT and SPS rules, which would allow panels to request the formation of technical experts groups to assist their deliberations.¹⁷

The undemocratic nature of the Final Agreement is also reflected in the proposed World Trade Organization (the WTO).¹⁸ The WTO is a gathering of unelected diplomats who would have substantial powers in managing international trade and in setting the rules by which nations must play. The rules of participation for this WTO are as yet unwritten.¹⁹ If the parties adopt rules of procedure that exclude citizens, as the other provisions of the Agreement suggest they will, then the WTO will be a new and unaccountable international bureaucracy standing between citizens and their ability to protect the environment and human health. As democratically elected representatives you should bear this danger in mind as you evaluate the Final Agreement.

Let there be no misunderstanding. If the Final Agreement is implemented trade panels and diplomats will sit in secret judgement over the democratically enacted environmental, health and safety laws of the United States and other nations. Citizens' eyes will be blinded, their ears covered, and their voices silenced. When democratic practices are eroded by international agreements, the law-making function exercised by democratically elected lawmakers—including this Congress—is weakened. Power is subtly, or not so subtly, transferred from the hands of legislatures accountable to their constituents, to diplomats accountable to heads of states. Environmentalists are deeply worried by this prospect. We believe that this issue merits the careful attention of this Subcommittee.

### III. The Failure to Ensure Environmental Sustainability

The Sierra Club's second test is environmental sustainability. This test has two parts. First the Final Agreement must not endanger U.S. environmental, health and safety laws. Second, the Agreement must provide the safeguards necessary to ensure that the increases in trade the Agreement will promote will not harm the quality of our environment. Here again, we do not believe the Agreement passes muster.

#### A. Threats to U.S. Environmental, Health and Safety Laws

The first aspect of environmental sustainability is to ensure that our trade laws do not threaten existing and future environmental, health and safety laws. Regrettably, the Final Agreement is replete with provisions that place these laws in serious jeopardy. The worst of these are found in the rules on Technical Barriers to Trade (TBT).²⁰

If the Final Agreement is implemented, the TBT rules will be applied in the vast majority of challenges to our environmental standards. The one notable exception would be challenges to U.S. food safety laws, which will be judged under the separate Sanitary and Phytosanitary (SPS) rules.²¹ The Final Agreement's TBT rules would require that our environmental laws be "no-more trade restrictive than necessary . . .".²² Simply put, this language requires that each and every U.S. environmental law must be the least trade restrictive means to the environmental ends desired. In other words, if a trade panel, with no environmental expertise or citizen participation, but with the benefit of hindsight and operating in secret without the real world pressures faced by legislatures and regulators, can conceive a hypothetical, alternative less trade restrictive standard that it believes protects the environment, then the environmental law in question will be found to violate the Final Agreement.

¹⁵Understanding on Dispute Settlement, *supra* note 5, at art. 8.1. In providing guidance as to what individuals are "well qualified" to serve as panelists the Final Agreement lists the following as criteria: (1) prior service on a dispute panel; (2) prior service before a dispute panel; (3) prior service as a representative of a party at the GATT or WTO; (4) prior employment in the Secretariat; (5) prior service as a senior trade policy official for a party; and (6) experience teaching or publishing on international trade law or policy. *Id.*

¹⁶See *Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes*, (adopted Nov. 7, 1990), BISD (37th Supp.), at 201, 216-20 (discussing World Health Organization's submission to and appearance before GATT dispute panel).

¹⁷Final Agreement, Agreement on Sanitary and Phytosanitary Measures, chapter II.4, at art. 36 [hereinafter Agreement on SPS]; Final Agreement, Technical Barriers to Trade, chapter III.5, at art. 14 [hereinafter TBT Text].

¹⁸Final Agreement, Agreement Establishing the Multilateral Trade Organization, chapter II, 1-14 [hereinafter WTO Agreement] (the name of the Multilateral Trade Organization has been officially changed to the World Trade Organization).

¹⁹See, e.g., *id.*, at arts. 2-7.

²⁰See generally, TBT Text, *supra* note 17.

²¹See generally, Agreement on SPS, *supra* note 17.

²²TBT Text, *supra* note 17, at art. 2.2.

By way of an analogy, imagine if the Supreme Court of the United States could reject U.S. government policies and programs in any instance where the program or policy could possibly be improved upon in any way.²³ Those engaged in the difficult business of writing law should take a close look before endorsing any agreement that would judge their work by the exacting yardstick of perfection with 20/20 hindsight.

The least restrictive to trade standard of review invites challenges to a host of our most vital environmental laws, including, but not limited to: (1) the Clean Air Act;²⁴ (2) the Marine Mammal Protection Act;²⁵ (3) the Endangered Species Act;²⁶ (4) the High Seas Driftnet Fisheries Enforcement Act;²⁷ (5) the Sea Turtles Amendment;²⁸ (6) the African Elephant Conservation Act;²⁹ (7) the Magnuson Fishery Conservation and Management Act;³⁰ (8) the Pelly Amendment;³¹ (9) the Toxic Substances Control Act;³² (10) the Federal Insecticide, Fungicide, and Rodenticide Act;³³ and, (11) the Forest Resources Conservation Act.³⁴

Many of these same laws would also be endangered by the proposed TBT rules on process standards. Process standards regulate the manner in which products are made, as opposed to product standards, which regulate the characteristics of the actual products. The current GATT text is silent on the product/process distinction, however, it has been interpreted to prohibit process standards. The Final Agreement is troubling because it directly addresses the process/product issue, and does so in a manner that is less than helpful. Under the proposed TBT rules, process methods that relate to the characteristics of products (such as good manufacturing or laboratory practices requirements) would be allowable, however, all other process standards would not.³⁵

Neither the High Seas Driftnet Fisheries Enforcement Act's prohibitions on the use of driftnets,³⁶ or the Marine Mammal Protection Act's limits on the use of purse seine nets in the Eastern Tropical Pacific Ocean,³⁷ would seem to fall within the categories of allowable process standards. As these examples show the TBT provisions on process standards would jeopardize a wide range of U.S. environmental, health and safety laws, including, in particular many of our wildlife conservation laws. Moreover, by directly speaking to the process standard issue, the TBT rules would make needed reforms to the process/product distinction far more difficult.

The Final Agreement's provisions on conformity assessments also raise serious concerns about the continued ability of the United States to protect its citizens and their environment.³⁸ A conformity assessment is the process by which an importing country certifies that products produced under other countries' environmental, health and safety laws also conform with its laws and can be sold on its markets. The potential for nonconforming products finding their way into the United States and harming our citizens or our environment makes it vital that the United States retain its power to effectively determine which products conform to U.S. standards.

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²³In reality, recognizing that regulators and legislators are better qualified to make these decisions, the Supreme Court gives a great deal of deference to their decisions. See *United States v. Carolene Prods. Co.*, 304 U.S. 144 (1938) (deference to legislative decisions); *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 (1984) (deference to regulatory decisions).

²⁴See, e.g., 42 U.S.C. § 7545(k)(s)(B).

²⁵See, e.g., 16 U.S.C. § 1371.

²⁶See, e.g., 16 U.S.C. § 1538.

²⁷Pub. L. No. 102-582, 106 Stat. 4900 (1992).

²⁸16 U.S.C. § 1537.

²⁹16 U.S.C. §§ 4201-4245.

³⁰See, e.g., 16 U.S.C. § 1825(a).

³¹See 22 U.S.C. § 1978 (a)(4).

³²See, e.g., 15 U.S.C. § 2612.

³³See 7 U.S.C. § 136o.

³⁴16 U.S.C. § 488(b)(3),(5).

³⁵TBT Text, supra note 17, at Annex 1, art. 1-2.

³⁶See supra note 27.

³⁷See supra note 25.

³⁸TBT Text, supra note 17, at art. 5.1.2.

Unfortunately, the Final Agreement would limit our ability to conduct these conformity assessments by requiring that our processes for such assessments "be not more strict or applied more strictly than necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create."³⁹ While this standard may seem innocuous at first glance, the term "necessary" in trade jurisprudence generally means "least trade restrictive."⁴⁰ The application of a least trade restrictive test in judging U.S. conformity assessments would seriously hinder our ability to protect our citizens and their environment. Under this standard not only would trade panels be able to determine what procedures are "necessary" to give U.S. citizens the confidence that they are being protected, but these panels would also have the ability to determine what constitutes a significant risk to U.S. citizens that may justify more strict assessments. In other words, these panels would have the right to tell us what we should be afraid of and what we can do to ameliorate those fears.

The TBT text's provisions on harmonization are also troubling. For example, the Final Agreement would commit the United States to using international standards as the basis for its environmental, health and safety standards.⁴¹ Article 2.4 of the proposed TBT rules specifically provides that:

Where technical regulations are required and relevant international standards exist, or their completion is imminent, Members shall use them, or their relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental problems.⁴²

In general, international environmental standards are lower than U.S. standards. This is the lowest common denominator problem, where one holdout country can drag a standard down to its own inadequate level. U.S. standards also suffer internationally because we enter these standard setting fora alone. Other nations, with more integrated standards systems, use these fora to effectively block rush our standards. Thus, in setting new environmental standards the United States would have to begin its process at a level that is likely to be lower than where it would otherwise begin. Inevitably, this will put pressure on the United States to lower our environmental standards.

Further, where the United States chooses to depart from an international standard and take a more protective measure, not only would the United States have to provide notice of the departure to the other GATT parties, but it would also have to give these parties the right to comment on the proposed higher standard.⁴³ If the comments to date of other countries on our environmental standards are any guide, this provision is cause for concern. We are aware of no incident where another country has used trade rules to argue in favor of higher U.S. standards. However, the record of other countries using trade rules to argue against higher U.S. standards is replete.⁴⁴ If implemented, this requirement will place the United States in the untenable position of having to decide between turning a deaf ear to its most valued trading partners or having to lower its environmental protections.

The Final Agreement's SPS rules also raise serious concerns with regard to U.S. food safety laws. Although the Clinton Administration was able to secure some changes to the Agreement's SPS provisions, those rules would still jeopardize our ability to ensure that the food we eat in the United States is pure and safe. First and foremost, like the TBT text, the SPS rules would require that our food safety laws be least trade restrictive.⁴⁵ One of the changes that the Clinton Administration was able to secure seeks to clarify this least trade restrictive test to provide greater leeway for environmental protections,⁴⁶ however, the test itself is unchanged: least trade restrictive.⁴⁷ Moreover, in determining whether a food safety standard is least trade restrictive the SPS rules would require that the standard's health and safety protections must be weighed against its economic costs.⁴⁸ The end result of these rules is that any time a secretive panel made up of trade experts, second guessing U.S. food safety experts, can conceive of an alternative less trade restrictive standard that they feel ensures that the food the American people eat is safe, the standard our food safety experts felt was necessary will be in jeopardy.

The SPS rules would also require that all our food safety standards must be based upon scientific principles and the product

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³⁹*Id.*

⁴⁰See *Thai Cigarettes Case*, *supra* note 16, at 200-23.

⁴¹TBT Text, *supra* note 17, at art. 2.4.

⁴²*Id.*

⁴³TBT Text, *supra* note 17, at art. 2.9.4.

⁴⁴See *infra* notes 72-84 and accompanying text.

⁴⁵Agreement on SPS, *supra* note 17, at art. 21.

⁴⁶*Id.*, at art. 21, note 3.

⁴⁷*Id.*, at art. 21.

⁴⁸*Id.*



of a risk assessment.⁴⁹ While scientific principles are vital to environmental policies and risk assessments are valuable tools for crafting environmental protections, such rigid requirements raise a number of serious questions that should not be left unanswered. First, and most importantly, it is unclear how much power the Final Agreement's scientific principles language would give trade panels to second guess the quality of science or play one set of science off another. Second, it is unclear how these requirements would apply where a standard is adopted as a political decision, even where a subsequent risk assessment confirms the risk the standard addresses. Third, it is unclear how these requirements would apply to food safety standards adopted by referendum or popular vote. Fourth, it is unclear whether state and local governments have the human and fiscal resources necessary to meet these rules and still maintain our generally high levels of safety. Finally, it is unclear how these rules would apply to standards that are based on consumer preference or ethical considerations.

The SPS rules on harmonization are also of serious concern. The SPS rules would require the United States to base its food safety standards on international standards. Article 9 of the proposed SPS text states as follows: "[t]o harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary and phytosanitary measures on international standards, guidelines or recommendations, where they exist. . . ."⁵⁰

The use of international standards as a point of departure for U.S. food safety standards is troubling in a number of respects. The principal international food safety standard setting body is Codex Alimentarius. According to a 1992 Congressional Research Service Report, comparing certain Codex Alimentarius and U.S. food safety laws, nearly 20 percent of Codex's standards are lower than the U.S. comparable standard.⁵¹ In real terms, one out of every five apples is bad. The CRS Report also found that differences between the Codex and U.S. standard systems precluded comparison between 61 percent of the Codex and U.S. standards.⁵² These differences between the U.S. and international systems are themselves troubling. Unlike U.S. food safety standards, Codex standards are developed without public comment and are not subject to peer review.⁵³ Moreover, many of the individuals on Codex delegations who actually select the food safety standards are drawn from the regulated industries.⁵⁴

In addition to the requirement to use international SPS standards as a point of departure, the Final Agreement also would require the United States to participate in the Committee on Sanitary and Phytosanitary Measures, which is intended to facilitate harmonization.⁵⁵ This Committee is troubling because the Committee's mandate explicitly requires its guidelines to "take into account . . . the exceptional character of human health risks to which people voluntarily expose themselves."⁵⁶ In other words, in facilitating the harmonization of standards, the Committee is required to weigh the level of risks we voluntarily accept against the levels of risks we chose not to accept. The full ramifications of this provision are unclear. For example, will the Committee balance the level of risk we accept in driving a car or living in an urban center, such as Los Angeles, when harmonizing the level of cancer risk we will accept in our foods? By the provision's own terms it would seem so.

The SPS rules would also limit our ability to inspect the foods coming into our country to ensure their safety. Under the Final Agreement, the information we can require about food products, and our procedures for inspecting and approving such products (both individual items and classes of items) would have to be "necessary."⁵⁷ Here again, the danger is that the term "necessary" in trade jurisprudence generally means least trade restrictive.⁵⁸ This provision also would invite trade panels to second guess our food safety inspection and monitoring programs, which if anything need to be stricter.

The potential threat from the TBT and SPS rules to environmental, health and safety laws does not stop at the federal level. The Final Agreement explicitly requires the United States to take measures to ensure that the standards of state and local governments conform with the TBT and SPS rules.⁵⁹ These requirements would leave a wide range of state and local

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⁴⁹*Id.*, at art. 16.

⁵⁰*Id.*, at art. 9.

⁵¹Donna Vogt, CRS Report for Congress: Sanitary and Phytosanitary Measures Pertaining to Food in International Trade Negotiations, Sept. 11, 1992, at 22.

⁵²*Id.*

⁵³Compare id., at 18-20 (discussing U.S. standard setting) with id., at 20-22 (discussing Codex standard setting).

⁵⁴See Daphne Wysham, The Codex Connection: Big Business Hijacks GATT, 251 *The Nation* 770, 770-72 (1990).

⁵⁵Agreement on SPS, supra note 17, at art. 20.

⁵⁶*Id.*

⁵⁷*Id.*, at Annex C, art. 1(c),(e).

⁵⁸See, e.g., Thai Cigarettes Case, supra note 16, at 200-23.

⁵⁹TBT Text, supra note 17, at art. 3.1. ("Members shall take such reasonable measures as may be available to them to ensure compliance by [state and local governments] with the provisions of Article 2); art. 2.2 (setting out least trade restrictive test); Annex 1, art. 7 (defining local government body to include state and local governments);

environmental, health and safety standards vulnerable to a trade challenge. For example, California's Public Resources Code includes a minimum recycled content requirement for glass beverage and food containers.⁶⁰ The European Community has already stated that it believes that this requirement is in violation of the current GATT rules.⁶¹ The Final Agreement's more draconian rules will only serve to strengthen this and other threats to state and local environmental, health and safety laws.

It is important to note as well that the Final Agreement gives no sanctuary to the environmental protections of international environmental agreements such as the Montreal Protocol,⁶² the Basel Convention,⁶³ and the Convention on International Trade in Endangered Species.⁶⁴ Although the NAFTA⁶⁵ should not serve as the environmental standard by which trade agreements are judged, even the NAFTA attempted to provide heightened protection to these international environmental agreements.⁶⁶ Under the Final Agreement, however, these and other international environmental agreements would be exposed to the same threats that would confront national and sub-federal environmental, health and safety laws. Thus, if a trade panel determined that the United States method of implementing the Montreal Protocol was not least trade restrictive, the United States could be found to violate the Final Agreement. The threats here are real. For example, the United States Congress is currently in the process of amending the Resource Conservation and Recovery Act (RCRA) to implement the Basel Convention. One option for implementation now being discussed would ban trade in wastes with all countries except Mexico and Canada, and to allow trade in recyclables only with countries from the Organization for Economic Cooperation and Development. This option would go beyond the specific requirements of the Basel Convention and might be seen as more trade restrictive than other options for implementing the Convention. Thus, this option if implemented could conflict with the Final Agreement.

Similarly, the United States requires as part of its implementing legislation for the Montreal Protocol the labelling of certain products made with ozone-depleting chlorofluorocarbons.⁶⁷ The Protocol, however, does not specifically require parties to adopt a labelling scheme. Thus, the United States' implementation of the Protocol could be seen as more trade restrictive than other possible implementation schemes. Here again, this could place our protections under the Protocol in conflict with the terms of the Final Agreement. Despite the repeated pleas of our trading partners and many U.S. interests that we should attack global environmental problems through multilateral means, the Final Agreement rewards our multilateralism by placing it at risk.

There are those who will argue that although the Final Agreement places environmental standards at risk, the risks are low. They will rightfully claim that a trade panel cannot actually invalidate a U.S. law. They will also claim that the chance of another party challenging a rational U.S. environmental, health or safety law is minimal. Their first claim is misguided, their second is erroneous.

While it is true that a trade panel cannot actually overturn a party's environmental, health or safety laws, under the Final Agreement's new dispute resolution provisions substantial pressure can be brought to bear on domestic authorities to change their policies and protections. For example, whereas the current GATT allows a defending party to block implementation of a panel decision, the Final Agreement requires consensus of the parties to block a panel decision.⁶⁸ The effect of this provision is quite substantial and can be seen by way of comparison to the original Tuna/Dolphin decision.⁶⁹ Although Mexico won the Tuna/Dolphin panel decision, recognizing the political and environmental costs at stake, Mexico elected not to pursue adoption of the panel decision. Under the provisions of the Final Agreement no such option would exist; a report of the standing Appellate Body or an unappealed dispute panel report would be adopted automatically unless a consensus of the

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Agreement on SPS, supra note 17, at Annex A, art. I (defining SPS measure to include any measure "within the territory of the Member").

⁶⁰See Cal. Pub. Res. Code § 42310 (Deering 1993).

⁶¹See Commission of the European Communities, Report on United States Trade and Investment Barriers 1993: Problems of Doing Business With the U.S., 62-63 (1993) ("Therefore the application of [the California minimum recycled glass content requirement] to imported products is not in conformity with GATT rules").

⁶²The Montreal Protocol on Substances that Deplete the Ozone Layer, adopted and opened for signature Sept. 16, 1987, entered into force Jan 1, 1989, S. Treaty Doc No. 100-10, 26 I.L.M. 1541.

⁶³The Basel Convention on Transboundary Movement of Hazardous Waste and Their Disposal, opened for signature Mar. 22, 1989, U.N. Doc. EP/16.80/3, 28 I.L.M. 649.

⁶⁴The Convention on International Trade in Endangered Species of Wild Flora and Fauna, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

⁶⁵See NAFTA, supra note 3.

⁶⁶See NAFTA, supra note 3, at art 104.

⁶⁷See 42 U.S.C. § 7671j.

⁶⁸Understanding on Dispute Settlement, supra note 5, at art. 16.4.

⁶⁹See United States - Restrictions on Imports of Tuna, (decided Sept. 3, 1991), DS21/R.

Dispute Settlement Body rejects the report.⁷⁰ Even if both of the parties to a dispute realized that a decision was environmentally or otherwise unsound, they could not block the decision without agreement of all the other parties to the Agreement.

Once a decision has been adopted, the Final Agreement would also increase the power available to the complaining party to induce the losing party to change its practices. For instance, a victorious complaining party would be able to ask the standing Dispute Settlement Body to suspend the application of concessions or obligations granted under the Agreement to the challenged party.⁷¹ If a U.S. standard were to fall victim to the substantive rules discussed above, these new procedures would give other countries tremendous leverage over the United States to change its law.

Moreover, the belief that the Final Agreement's dispute resolution procedures will not be brought to bear on rational U.S. environmental, health and safety laws is not borne out by the facts. In the past three years, other nations have used trade rules to bring challenges against the United States for: (1) the Corporate Average Fuel Economy standards;⁷² (2) the Marine Mammal Protection Act;⁷³ (3) the Toxic Substances Control Act;⁷⁴ (4) the Internal Revenue Code's Gas Guzzler Tax;⁷⁵ and (5) Puerto Rico's milk safety standards.⁷⁶ During this same three year period, challenges have also been threatened against: (1) EPA's reformulated gasoline regulations;⁷⁷ (2) California's Safe Drinking and Water Toxic Enforcement Act;⁷⁸ (3) the High Seas Driftnet Fisheries Enforcement Act;⁷⁹ (4) U.S. regulations on the importation of animals or animal byproducts from areas with Bovine Spongiform Encephalopathy;⁸⁰ (5) EPA's interim tolerance for the pesticide procymidone;⁸¹ (6) USDA's ban on certain virally infected Canadian potatoes;⁸² (7) EPA's regulations governing the pesticide ethylene bisdithiocarbamates;⁸³ and (8) the Clinton Administration's proposal for a British Thermal Unit (BTU) energy tax.⁸⁴ Added together, there have been no less than 13 trade challenges or threatened trade challenges to U.S. environmental, health and safety laws in roughly three years time. The facts are telling. The threat to environmental, health and safety laws here is real and the Final Agreement will only increase this threat.

Finally, the powers accorded under the Final Agreement to the proposed WTO make it difficult at this time to fully assess the potential threat to U.S. environmental, health and safety standards. For example, the WTO would be empowered to make certain changes to the Final Agreement's SPS and TBT rules upon a two-thirds vote of the parties.⁸⁵ Under the current GATT such changes can only be made by a consensus of the parties. Although changes adopted through the WTO procedure would only be effective upon the parties agreeing to them, this provision still makes the Final Agreement's threat to environmental, health and safety laws a moving target. The ability of the parties to change the rules by a two-thirds vote is most troubling

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⁷⁰Id., at arts. 16.4, 17.14.

⁷¹Understanding on Dispute Settlement, supra note 5, at art. 22.2.

⁷²See Second Submission to the Panel on United States Taxes on Automobiles, supra note 11.

⁷³See Restrictions on Imports of Tuna Case, supra note 22.

⁷⁴See Brief of Amicus Curiae for the Government of Canada at 16-19, Corrosion Proof Fittings v. EPA, 947 F.2d 1201 (5th Cir. 1991).

⁷⁵See Second Submission to the Panel on United States Taxes on Automobiles, supra note 11.

⁷⁶See Final Report of the Panel, In the Matter of Puerto Rico Regulations on the Import, Distribution and Sale of U.H.T. Milk From Quebec, USA-93-1807-01, June 3, 1992.

⁷⁷Venezuela Asks U.S. for Talks on New Fuel Rules, Reuters, Energy News, Fin. Rep., Jan. 14, 1994 (available on NEXIS).

⁷⁸E.C. Report, supra note 61, at 69-70.

⁷⁹U.S. Senator Murkowski Optimistic About ROC Bid to Enter GATT, Central News Agency, Dec. 4, 1991 (available on NEXIS).

⁸⁰E.C. Report, supra note 61, at 58-59.

⁸¹EPA Cites Trade Consideration in Granting Interim Procymidone Tolerance, 8 Int'l Trade Rep. (BNA) 652 (1991).

⁸²U.S. Ban on Some Canadian Seed Potatoes Brings Provincial Calls for Retaliation, 8 Int'l Trade Rep. (BNA) 238 (1991).

⁸³See Alan C. Raul & Laurie G. Ballenger, Trade Conflicts Involving Environmental, Health or Safety Standards, June 1, 1993 in Beveridge & Diamond, P.C., International Environmental Law Seminar, June 3, 1993, E, at 15.

⁸⁴See Clinton Energy Tax Staggers in Senate, Predicasts, May 1993 (available on NEXIS).

⁸⁵WTO Agreement supra note 18, at art X.3.



in the trade and environment area, where no other nation has shown the same degree of environmental awareness or leadership that the United States has. Simply put, with the WTO it is impossible to know exactly what we are getting ourselves into.

### B. The Failure to Provide Safeguards to Ensure Environmental Sustainability

The second part of the Sierra Club's sustainability test is that in order to be acceptable the Agreement must include safeguards to ensure that expanded trade will be environmentally sustainable in nature. Regrettably, the Final Agreement also falls short here.

The Sierra Club fears that the Agreement's incentives for increased trade and foreign investment,⁸⁶ absent safeguards, could take us backwards, encouraging countries to compete in international markets by lowering or waiving their environmental standards. Although, the Sierra Club opposed the NAFTA, the NAFTA and the environmental supplemental agreement did at least attempt to deal with the issues of environmentally-related investment flight and industrial relocation.⁸⁷ In sharp contrast, the Final Agreement makes no such effort. The Agreement fails to provide a mechanism to ensure that nations will not lower or waive their environmental, health, and safety laws to encourage investment. Moreover, whereas the NAFTA supplemental agreement provided a mechanism designed to ensure that the three parties take seriously their environmental commitments, the Final Agreement fails to provide a process to: (1) ensure that parties will enforce their existing environmental, health and safety laws; and (2) encourage the parties to adopt new laws to address pressing environmental, health and safety threats.

In fact, there is only one sustainability safeguard in the entire Final Agreement. Article 8.2(c) of the Final Agreement's Agreement on Subsidies would allow for one-time, non-recurring subsidies designed to assist existing facilities comply with new environmental requirements.⁸⁸ However, even this "green" subsidy provision is very limited. The subsidy: (1) could not exceed 20% of the cost of the adaptation required; (2) could not be applied to "the cost of replacing and operating the assisted investment . . ."; (3) could not be "directly linked to and proportionate to firm's planned reduction of nuisances and pollution . . ."; (4) could not "cover any manufacturing cost savings which may be achieved;" and, (5) would have to be "available to all firms which adopt the new equipment and/or production process."⁸⁹ Given these limitations, it is clear that this subsidy provision cannot be relied on as the sole means of ensuring the sustainability of expanded world trade and investment.

The Agreement Establishing the WTO also provides another troubling example of the failure to build adequate safeguards for environmental sustainability into the Final Agreement. Despite the fact that a host of possible safeguards have been suggested for the WTO framework agreement, the only mention of environmental concerns in the WTO Agreement consists of a non-binding preambulatory acknowledgement of the goal of sustainable development.⁹⁰

Nor does the Final Agreement offer us the luxury of looking to some future trade and environment negotiation to provide the safeguards necessary to ensure environmentally sustainable trade. Over the course of the past three years the explicit message from the world trade community has been that it is too late to address the integration of trade and environmental issues in the Uruguay Round; this integration must wait for the promised "Green Round."

The promise of a Green Round, however, may prove illusory. Not only does the Final Agreement fail to commit to a Green Round, but it also fails to earnestly move towards this goal. For example, despite extensive efforts on the part of the United States, the WTO Agreement does not even provide for a Committee on Trade and the Environment, which might have served as a venue for beginning these reform efforts. The United States is still working diligently with other GATT parties to add such a committee,⁹¹ however, the failure of the GATT parties to include such a committee from the outset raises serious questions as to their commitment to democratic and environmental reform.

The parties' failure to commit to a Green Round, and their refusal to create a Trade and Environment Committee, is not a reflection on the efforts of the United States government, and in particular Ambassador Kantor. The burden of these failures must rest squarely upon our recalcitrant trading partners.

While the parties were unwilling to commit to a Green Round or a Trade and Environment Committee, they did agree to develop a "Work Plan" on trade and the environment.⁹² We understand that the United States government is now working

⁸⁶Final Agreement, Agreement on Trade-Related Investment, chapter 7.

⁸⁷See NAFTA, *supra* note 3, at article 1114.2; North American Agreement on Environmental Cooperation Between the Government of the United States, the Government of Canada and the Government of the United Mexican States, Sept. 13, 1993, at arts. 22-36, 32 I.L.M. 1480, 1490-94 (1993).

⁸⁸Final Agreement, Agreement on Subsidies and Countervailing Measures, chapter II.13, at art. 8.2(c)(i)-(v).

⁸⁹*Id.*

⁹⁰WTO Agreement, *supra* note 3, at preamble.

⁹¹Such an addition is possible pursuant to article 9 of the Agreement Establishing the WTO. See *id.*, at art. 9.

⁹²Trade Negotiations Committee, Trade and Environment: Draft Decision, Dec. 13, 1993, TN. TNC/W/123, UR-93-0196.

to expand upon this Work Plan to bring about the desired reforms. Although we strongly support the Administration's initiatives here and will work with the Administration to help them succeed, the Work Plan is not a panacea for the flaws of the Final Agreement.

Moreover, we have serious questions about the Work Plan's ability to advance an environmental reform agenda. First, GATT negotiations are time consuming.⁹³ For example, the Uruguay Round required roughly seven years to complete. The Work Plan lacks the immediacy of even a negotiation and so there is no way to predict just how long this process will endure. Moreover, while this time consuming process inches forward our environmental, health and safety laws would remain at risk.

One alternative would have been to reach an agreement on a moratorium to trade challenges to environmental, health and safety laws during the process of the Work Plan. This alternative would not only have insulated environmental laws from challenge, but would have provided some impetus for the parties to negotiate environmental reforms with all deliberate speed. This alternative, however, was not adopted.

Second, many of the problems that need to be addressed through the Work Plan are the result of provisions in the Uruguay Round. The resolve of the parties to turn right around and essentially reopen provisions that were the product of seven years of negotiations must be questioned.

Third, the success from a trade perspective of the Uruguay Round must be attributed in large measure to the wide range of issues included in the Round's package deal; virtually every party had some stake in a successful completion to the Round. If the Final Agreement is signed, sealed and delivered, what inducements will be available to ensure the success of future trade and environment efforts?

Lastly and most importantly, the Work Plan does not even admit to the need for reform. In its most telling provision the Work Plan provides that the "programme of work [shall] make appropriate recommendations on whether any modifications of the provisions of the Multilateral Trading System are required, compatible with the open, equitable and non-discriminatory nature of the system . . . ."⁹⁴ We have already passed the issue of whether reforms are needed. The issue now is what reforms are needed. The Work Plan's failure to reflect this evolution betrays its overall entrenched reluctance to reform the trading system. Given its inherent limitations, the Work Plan cannot be looked to as an environmental justification for the adoption of the Final Agreement.

## Conclusion

For the past three years the integration of trade and environmental issues has occupied a prominent place on the trade policy agenda. Despite three years of intense efforts, this Congress has before it a Final Agreement that not only fails to make a considered attempt at integrating these two vital areas of public policy, but launches a direct attack on our environmental, health and safety protections. While the failure of the current GATT to address the need for environmental protection can be chalked up to benign neglect—environmental issues were not considered pressing in 1947—no such justification is available for the Final Agreement.

Not too long ago I had the opportunity to hear a senior Administration official make an impassioned plea for the environmental community to support the Uruguay Round so that the Clinton Administration "can stop painting the walls that other Administrations have built and can start building their own trade and environment framework." Unfortunately, the very architecture of the Final Agreement would appear to preclude erecting trade policies that support and do not impede environmental, health and safety protection. As a condition for Congressional approval of the Final Agreement, the Administration must do more than offer a few splashes of green paint. It must articulate a plausible strategy for fostering sustainable development through trade.

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⁹³In fact, GATT negotiations are so time consuming that some call GATT "the General Agreement to Talk and Talk." GATT Bargaining Goes Down to the Wire, Wall St. J., Mar. 6, 1992, A2.

⁹⁴Draft Decision, supra note 92.

Chairman GIBBONS. Thank you.  
Ms. Wallach.

**STATEMENT OF LORI WALLACH, DIRECTOR OF TRADE  
PROGRAM, PUBLIC CITIZEN**

Ms. WALLACH. Thank you, Mr. Chairman, for inviting me to testify today. I will submit my full testimony to the record, and concerning how long your hearing has gone, I will summarize quickly.

My written testimony has a detailed analysis of the four sections of the Uruguay round text that most concern Public Citizen, the two standards provisions, food, sanitary and phytosanitary, and technical standards, as well as the proposal to establish the World Trade Organization in its attached annex on dispute resolution.

To sum most broadly, we join the chorus, the unanimous chorus, of environmental and consumer groups who have very grave concerns with the way the Uruguay round text came out. Many of the issues that Mr. Nader raised about the WTO and democracy and the shift of power away from elected legislatures to unaccountable international bodies in the areas of environmental, health, and safety regulation are at the core of our concerns.

As I was listening to your discussion with Mr. Nader about the evolution, though sometimes slow, of policy, it struck me, thinking about reading the Uruguay round text, that perhaps the way the WTO is set up in fact, as my colleague suggests, closes what would be an evolutionary process in the right direction for environmental consumer protection.

The substantive terms of the Uruguay round unfortunately are also backward-looking from an environmental and consumer perspective. As has been noted, neither the textural modifications nor the notion of an aside agreement that were found in the NAFTA that, though I would argue modestly, connected trade and environment, not even that level of commitment is found in the Uruguay round text.

Particularly in the area of standards, to summarize, the problem is that maximizing trade liberalization is put as the No. 1 value over all others. It is a point Mr. Nader made, but if you look closely at the standards sections, the rules are quite specific, and it falls out in several different themes that one finds in both the food standards and the general standards.

First of all, there is a limitation about what are concerned legitimate objectives for environmental or health regulation that impacts trade, and it is constricting what some of the objectives we now use—for instance, market access—to accomplish. For instance, under the food standards, one is not allowed to use environmental protection to be the basis for food safety law, except many of our pesticide standards are about environmental protection, not just food safety.

Similarly, the level of protection a country can choose is limited. This was one of the advances NAFTA made. It took the draft language and took away some of the limitations. In the final Uruguay round text, the level of protection a country can choose in all of its standards is quite constricted, and even more clearly, a means a country can use to accomplish whatever level of protection it might be able to get out of the Uruguay round formula is limited, and this



is actually a point I think many of the administration officials will express concern on because there is glaring language in the text. The infamous phrase "least-trade restrictive" in the past has been used in several dispute panels to argue that basically trade must come first. There must be proof that there is no less trade-restrictive way to accomplish a GATT-legitimate end.

Then there is harmonization. Certain groups oppose the notion of harmonization as contradicting with democracy. The specific problem, the Uruguay round, is that the harmonization provisions will push downward because structurally there is no floor of protection. You can't challenge a country that is too low, but if your standards are too high, if your standards are higher than international standards, you must pass a series of different tasks that I have laid out or you have to bring your standard down as far as imports, which gets to the issue of international standards.

The democracy problems there are large. A lot of these standards that are listed as the appropriate standards for trade in the round have been set without participation from the environmental and consumer groups, but a high level of participation from the famed industry groups that we often in the United States and Congress fight with about these very questions, and not surprisingly, as a general matter, many of these standards are lower.

So far, GAO has only looked at carcinogenics, but in that case, they finally knew that 55 percent of the U.S. pesticide standards were more protective of health than the appropriate international standards listed by GATT, the codex standards.

Finally, there is the issue of equivalence. This is one that has not gotten much attention, but I think it is one that can cause a real public outcry if this round language were adopted as is. Under equivalence standards, a country is required to import something that clearly doesn't meet its specific standard if the country who wants to send in the food or good can argue that it meets our goal in providing the same level of protection.

Unfortunately, there are several gory examples of how this has not worked out in the trade context, both in meat inspection between the United States and Canada and in milk safety levels between Canada and Puerto Rico. There have been cases where, under the name of equivalence, inspection systems have been dropped or challenged, and equivalence analysis is done, more or less, arbitrarily, and the health effects have been in the meat case, dire, and in the milk case, potentially worrisome. It hasn't gone into effect.

Then, finally, is the issue of challenges. This gets to the whole notion of the WTO's role in dispute resolution, and because of our higher standards, health and safety standards, the United States needs to think very much about the context of the dispute resolution system as a defendant.

As I have listened to testimony before this committee, many industries think of us as the plaintiff. There is the notion that the WTO is great, this is useful, except the problem is those same rules and mechanisms will be applied to us when we are defendants which under these rules and our laws could be quite often in the environmental and health context.

As Mr. Nader said earlier, this outcome wasn't necessary, but now it is done. The core problems from Public Citizen's perspective in the GATT text can't be dealt with in the implementing legislation. However, there are some things that can be done.

One, unlike NAFTA's implementing legislation, we would argue it is very important that the domestic food inspection laws are not changed. It was added into the NAFTA. Changes were added into the NAFTA implementing legislation that a lot of groups and I think Members of the Congress probably didn't know were there for our poultry and meat inspection system. We don't think that was a good way to change those laws. They were weakened, and there was no public comment.

Second, there are a variety of different domestic openness and participatory mechanisms that could be put in as far as U.S. development of GATT policy and dispute resolution panel briefs and input.

Then, finally, we think it is very important there is no fast track extension in the implementing legislation because we think, as trade agreements have moved more and more into nontariff issues, it is important to rethink the balance between the executive and the legislative branches in the context of these nontariff issues, and perhaps there is some way of splitting out the tariff and nontariff issues and to rebalance the reality that more and more of the legislative branch's business is what is getting discussed, not just tariffs.

Finally, we would join in the call for a moratorium on challenges of environmental, health, and safety laws at the GATT and would urge that that be a part of the ministerial statements at the end of the GATT on April 15 until these issues can be worked out in whatever future negotiations may happen underneath the GATT system.

In conclusion, on the basis of what this text is like in considering the inability to fix its core problems, we would, though, urge Congress to reject this particular text.

[The prepared statement follows:]

## STATEMENT OF LORI WALLACH DIRECTOR OF PUBLIC CITIZEN'S TRADE PROGRAM

My name is Lori Wallach. I am the director of Public Citizen's Trade Program. I would like to thank the chairman and the Ways and Means Trade subcommittee for inviting me to testify on the agreement that has come out of the Uruguay Round of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT.)

I have been involved since 1991 in efforts to ensure that the Uruguay Round agreement did not undercut domestic health, safety and environmental laws, nor the domestic policy-making procedures in these areas that ensure access to interested citizens and accountability over decision-makers. Unfortunately, my analysis of the Uruguay Round text has led me to conclude that the proposed agreement would indeed undermine U.S. policy and procedures in these areas.

Much more importantly, the proposed transformation of the GATT from a trade contract into a new global commerce agency called the World Trade Organization (WTO) would greatly enhance the power of the global trade rules relative to each WTO member nation. This transformation would increase the threat the WTO's flawed substantive rules pose to hard-won U.S. environmental and consumer policies. As well, this transformation has serious implications in areas far beyond environmental and consumer protection. At stake in the upcoming congressional consideration of the Uruguay Round will be the future ability of each sovereign nation to implement policies to harness commercial activity to suit the needs of their inhabitants.

In this testimony, I will review four chapters of the Uruguay Round text that most directly affect Public Citizen's interests in democratic policy-making and environmental and consumer protection: the agreement establishing the WTO, the Dispute Settlement Understanding, the Sanitary and Phytosanitary Standards, and Technical Barriers.

### 1. The Uruguay Round Agreement Is Backwards-Looking

In recent years, people from the environmental and consumer protection communities increasingly have become aware of the problems current trade rules pose for environmental and consumer protection. From the perspective of the trade world, these conflicts might be viewed as the problems environmental and consumer protections cause trade policy. What has become clear to all parties involved is that steps must be taken to reconcile the interest in conducting international trade under a system of rules with the interest in promoting the environmental, health and safety policies required to ensure continued life on this increasingly populated planet.

The trade and environment debate grew through the negotiation and congressional consideration of the North American Free Trade Agreement (NAFTA.) This debate was energized in part by the warning signal of the 1991 Mexican challenge of the U.S. Marine Mammal Protection Act, which made obvious the threat to environmental and consumer policy of the existing trade rules. Many environmental and consumer groups concluded that the final NAFTA package would undermine the status quo of environmental and consumer protection. However, several of the NAFTA's provisions concerning standards were negotiated with the explicit intention of making them more compatible with environmental and consumer protection values than the draft Uruguay Round text on which standards negotiations were based. As well, the Clinton Administration added the environmental side agreement, philosophically, if not legally, linking trade and environmental policies.

These changes recognized the necessity to progress from the existing trade rules to rules more compatible with the other important policy values today's trade agreements invade because of their focus on nontariff issues. The text resulting from the Uruguay Round negotiations is a backward-looking agreement that does not even contain the NAFTA's limited improvements, much less the additional progress that is so desperately needed. Moreover, the GATT provisions on which the 1991 tuna-dolphin challenge was based have not been repaired, despite demands for such action in the Uruguay Round in a letter by 63 Senators and over 100 Representatives. Finally, the new WTO structure and its dispute resolution provisions provide significantly stronger enforcement of rules that from an environmental and consumer protective are fundamentally flawed.



## 2. **Establishment of the WTO Significantly Increases the Impact Global Trade Rules Will Have on Countries' Domestic Laws**

The agreement reached December 15, 1993 fundamentally transforms the nature of the world trade rules. Since its establishment in 1947, GATT has existed as a contract between nations, which have been called "contracting parties." The trade rules of GATT have largely focussed on traditional trade matters, such as tariffs, quotas and other measures clearly taken for the economic protection of a particular industry or sector.

The "World Trade Organization (WTO) is the new name given to what had been known in the previous Uruguay Round draft text as the "Multilateral Trade Organization (MTO)." If approved by the United States Congress and by other countries, the WTO would effectively replace the existing GATT with a new international organization. The final Uruguay Round text bestows on the WTO "legal personality," a legal status similar to that of the United Nations or World Bank.

As well, the Uruguay Round would massively expand the coverage of trade rules to impose unprecedented constraints on policy areas that have been controlled domestically. The Uruguay Round expands trade disciplines into new areas such as agriculture, services such as telecommunications and transportation, and intellectual property. The Uruguay Round would also put in place more pervasive restrictions in areas such as food standards and "technical standards" such as environmental or safety standards. Under the Uruguay Round terms, domestic laws in all of these areas must comport with international trade rules, or such laws can be challenged as "illegal trade barriers" by other countries through dispute resolution proceedings.

Establishment of the WTO also would raise the relative importance and strength of the global trade rules by giving them a permanent international organizational structure with an ongoing infrastructure and powers that GATT didn't have. All of the substantive trade rules that resulted from the Uruguay Round negotiations, agreements on trade in goods and services, intellectual property rules and more, fall under the WTO structure. Countries are obliged to ensure their domestic laws conform with the substantive trade rules of the WTO.

The WTO rules allow changes to some trade rules by a two-thirds vote of the Members that would then be binding on all Members. Under GATT, such changes could only be taken by consensus. As well, WTO Members must accept all aspects of the WTO's underlying substantive rules, while under GATT countries who opposed certain provisions or agreements would not be bound by them unless they so chose. From a trade perspective, this all-or-nothing rule eliminates the problem of "free riders." From a democracy perspective, this rule forces countries to accept trade in areas that might be undesirable or to forgo participation in the world trade system. The increase in power of the global trade rules relative to each countries' domestic laws is also obvious in the new dispute resolution provisions of the WTO, as described in detail below. Additionally, the WTO would establish numerous standing committees that could initiate on-going negotiations. Under GATT, additional negotiations could be initiated only by consensus of the parties, or alternatively countries that did not wish to be bound by new negotiations could opt out.

A major result of the WTO's establishment would be an increase in the power of the global trade rules relative to all domestic laws. This shift of power towards the global trade rules has serious implications for the future of democratic decision-making and citizen control of national policy.

### **A. Countries Must Ensure Conformity of Laws With the WTO**

The WTO text provides that:

**"Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements."** Agreement Establishing the WTO, Article XVI - 4.

This language requires a significantly stronger commitment from each country to conform to the trade rules underlying the WTO than was contained in the 1991 draft text for the Uruguay Round. Under this language, a countries' obligation is to ensure the conformity

of its laws with the substantive provisions of the Uruguay Round agreements.

The 1991 draft required that countries "shall endeavor to take all necessary steps, where changes to domestic laws will be required to implement the provisions of the agreements annexed hereto, to ensure the conformity of their laws with these Agreements."

Agreement Establishing the Multilateral Trade Organization, Article XVI-4 (1991.) Thus, under the draft text, countries' obligations were to endeavor to take the necessary steps. Even under this weaker legal formula, the Congressional Research Service concluded in an analysis of the 1991 "Dunkel" Draft GATT text that: a "party would no longer have control over whether or not it must change that particular policy or law [a successfully challenged law or policy] to conform with the GATT." CRS Legal Memo on Domestic Law Effects of the Dunkel Text's MTO Provisions requested by Representative Jill Long, April 1992.

Also, the new text extends the stronger obligation to ensure conformity with the WTO to encompass additional areas of domestic policy: regulations and administrative procedures. Bringing federal and state administrative procedures into conformity with requirements of the annexed agreements could have significant impacts on the openness, citizen participation and due process guarantees available in current domestic administrative procedures.

#### **B. The Principles of the WTO Do Not Include Environmental, Health, Labor Rights or Other Citizen Policy Goals**

The binding provisions setting out the WTO's functions and scope do not incorporate any environmental, health, or labor rights considerations. In fact, the only reference to the environment is in the rhetoric of the preamble to the WTO, which does not have the binding legal effect on the substantive provisions of the agreement. Labor rights is not mentioned in the preamble at all. Thus, the WTO text would establish a powerful new international institution whose mandate looks backwards to an era when environmental and other citizen considerations were not taken into account.

Moreover, there is nothing in the institutional principles of the WTO to inject any procedural safeguards of openness, accountability or citizen participation into the governance of this body or its functions. The WTO has no structural capacity for nongovernmental organizations or citizens to have any role in the functions of the WTO. While WTO Article V requires the General Council of the WTO to make appropriate arrangements with other governmental organizations that have responsibilities related to the WTO, regarding nongovernmental organizations, the language is permissive, not mandatory. Thus, the General Council is allowed, but not required, to make similar arrangements with "nongovernmental organizations concerned with matters related to those of the WTO."

#### **1. WTO Dispute Resolution: Stronger Enforcement of Bad Rules**

As with the GATT, the WTO dispute resolution allows a member nation to challenge the domestic laws of another member as a barrier to trade. Such challenges are decided in secret by panels of three trade experts chosen from a predetermined roster. (Disputing countries may opt for five person panels.)

The required qualifications for such panelists, for instance experience in a country's trade delegation or experience as a trade lawyer bringing a trade dispute, will result in panelists with a uniformly pro-trade perspective. *Id.* 8.1. In fact, with the exception of panelists qualified by merit of academic expertise in trade, the qualifications will result in panelists with a direct stake in the existing trade system. Moreover, there is no mechanism to guarantee that such panelists even will be exposed to alternative perspectives on environmental or health issues. This is the case because here is no allowance for amicus briefs from interested non-governmental groups or other guaranteed means of access for alternative viewpoints. In fact, the panel is not even required to get technical or scientific help. The text merely allows panels to do so at their choosing. Finally, the text specifically forbids identification of which panelists supported which positions and conclusions. This additional layer of secrecy adds to the lack of accountability of the WTO decision-makers who will be given significant new power. *Id.* at 17.11 and 14.11.

Under current GATT rules, decisions put forward by the three person panels must be approved by consensus. Thus, each country maintains the right – though politically difficult

to exercise — of blocking consensus and thus adoption and implementation of a panel decision. The U.S. used this "emergency break" to freeze adoption and implementation of a GATT ruling against provision of the U.S. Marine Mammal Protection Act which was successfully challenged as an illegal trade barrier by Mexico in 1991.

The new WTO dispute resolution rules take away this emergency break. Under the new rules, the decisions of the three-person review panels are automatically adopted 60 days after completion, unless there is a consensus among all WTO Members to reject the ruling, or the losing country files an appeal. Id. at 16.4. Thus, over 100 countries, including the country that has won the panel decision, must agree to stop its adoption.

Under the new rules, an appeal can be filed within 60 days after a panel has ruled. Id. at 17. Appeals are limited to issues of law covered in the panel report and legal interpretations developed by the panel. Id. at 17.6. Appeals must be decided within 90 days, after which that decision would also be automatically adopted unless unanimously rejected within 30 days of its issuance.¹

When a panel decides that a domestic law does not meet the requirements of the trade rules, its report is required to include the "recommendation" that the offending country change its law to conform with the trade rules. Id. at 19.1. Thirty days after the report is adopted, the offending country must inform the other countries of its intentions with respect to implementing the panel report. Id. at 21.3. Countries are supposed to change their laws immediately. If that is impracticable, the countries in the dispute can negotiate or submit to arbitration to determine a "reasonable time period." The text suggests that arbitrators should be guided by a 15 month limit on what is a reasonable period to change the offending law. Id. 21.3(c).

If a country fails to change its law within the set time period, the winning country can request negotiations to discuss the matter. However, 20 days after the time period has expired, the winning country can request permission to "suspend the application... of concessions or other obligations," meaning put in place trade sanctions against the country that has refused to change its law. Id. at 22.2. Such a request is automatically granted 30 days after the expiration of the set time period, unless there is unanimous consensus of all WTO Members to reject the request. Id. at 22.6.

The dispute resolution text states that such trade measures — or compensation by the losing country — are to be temporary measures when successfully challenged laws are not changed within the set time period. Id. at 22.1 and at 22.8. Where the "...recommendations to bring a measure into conformity with the covered agreements have not been implemented," the WTO's Dispute Resolution Body "shall continue to keep under surveillance the implementation of adopted recommendations or ruling...", including cases where there are continuing sanctions or compensation. Id. at 22.8.

Sanctions should initially be considered against parallel sectors. For instance, a country that refuses to change a food-related law should be given sanctions in food trade. However, under the WTO dispute resolution, countries may put up sanctions against any unrelated sector if parallel sanctions are "not practicable or effective." Id. at 22.3(c). The ability to use "cross sectoral" sanctions considerably increases a country's ability to cause economic pain and pressure on another country that refuses to change its laws by choosing sanctions in especially sensitive or important areas. The "level" of sanctions — the monetary value of them — is to be equal to the winning party's economic damage. Id. at 22.4. Countries are allowed to challenge the amount of sanctions. Such challenges are submitted to binding arbitration, preferably by the panel that decided the case. Id. at 22.6. Countries are required to accept the arbitral decision as final; a second arbitration is not allowed. Id. at 22.7.

#### A. Challenges Allowed Against Laws that Do Not Violate Trade Rules

The WTO allows trade challenges of a domestic law that conflicts with any of the

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¹ Id. at 17.14. "An appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt..." (DSB refers to the WTO Members meeting as the Dispute Settlement Body.)



WTO's substantive trade rules. However, it also allows challenges of some domestic laws that another country considers are "nullifying or impairing" any direct or indirect benefit that it expects from the specific trade rules even if there is no violation of a specific rule. *Id.* at 26.1. Similarly, a law can be challenged if "the attainment of any objective [of that Agreement] is being impeded" by that law. *Id.* at 26.1. The vagueness of this provision is alarming in that it could be interpreted to include laws and policies that would seem to be free from trade disciplines.

#### **B. Dispute Resolution: Secretive & Inaccessible to Citizens**

The secrecy of GATT dispute resolution is largely perpetuated in WTO dispute resolution. All panel proceedings are conducted in secret.² Unlike complaints, briefs and affidavits in the U.S. court system, documents presented to the panel are kept confidential.³ The extent of the secrecy is emphasized by what is being labeled an important improvement in openness: The WTO text allows countries to request a "non-confidential summary" of the information contained in official submissions that could be disclosed to the public. *Id.* at 3. This requirement is not an adequate substitute for disclosure of the submissions themselves, because the contents of the summaries need not fully disclose all of the evidence and arguments of the actual submissions. Interestingly, the WTO dispute resolution text specifically states that each country may release its own documents if it so chooses.⁴ There is no right for public comment or participation.

This secrecy flies in the face of the U.S. standards of openness and disclosure by which the Congress and courts are required to operate. Citizen advocates have fought hard in the United States to establish procedural safeguards in policy-making that guarantee citizen oversight through public hearings and access to documents and accountability of decision-makers through conflict of interest laws and elections.

#### **C. State and Local Laws Are Also Exposed to Challenge**

As with the existing GATT, the WTO allows challenges against state and local laws. DS Understanding at 22.9. When a WTO panel rules that a state or local law does not meet the trade rules, the federal government "shall take such reasonable measures as may be available to it to ensure...observance." *Id.* at 22.9. A GATT panel has already interpreted the "reasonable measures" standard, which is present in the existing GATT⁵. Under the adopted panel decision known as *Beer II*, the United States must take all action available under the constitution to force subfederal compliance with trade panel rulings. This could include preemptive legislation, litigation and withdrawal of federal financial support.

### **5. The Uruguay Round Jeopardizes Food Safety and Other Health, Safety, and Environmental Standards**

The Uruguay Round could undermine U.S. and state health, safety and environmental standards: (1) by requiring downward harmonization of standards; (2) by limiting the goals the U.S. may pursue in its standards; and (3) by limiting the means the U.S. may use to promote health, safety, and environmental goals. The gravity of the Uruguay Round mandates is compounded because trade challenges to health, safety, and environmental measures will be resolved by trade experts in the secret system described above that is stacked against consumer and environmental interests.

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² DS Understanding, Appendix 3, Working Procedures at 2. "The panel will meet in closed session."

³ *Id.* at 3 for regular panel reports. DS Understanding at 18.2 for Appellate Reports.

⁴ During the Bush Administration, Public Citizen successfully litigated a Freedom of Information case after being denied access to U.S. documents filed in GATT dispute resolution cases. The Bush Administration had argued that GATT rules required such documents be kept confidential, although the existing GATT is silent on the matter. The D.C. District Court found otherwise.

⁵ 1991 Panel report on Canadian challenge of certain U.S. Alcohol Taxes and regulations (*Beer II*.)

The Uruguay Round's principal standards provisions are found in the Agreement on the Application of Sanitary and Phytosanitary ("SPS") Measures, which addresses measures to protect human, animal, or plant life or health from risks arising from additives, contaminants, toxins, diseases, or pests, where such measures may, directly or indirectly, affect international trade, SPS Agreement, Annex, ¶ 1., and in the Agreement on Technical Barriers to Trade ("TBT"), which covers all product regulation other than that addressed in the SPS Agreement. TBT Agreement ¶ 1.5; Annex 1, ¶¶ 1-3. Both Agreements address a vast expanse of domestic regulation, ranging from end-product criteria to labeling and packaging requirements to risk assessment methods to testing, certification, inspection, and approval procedures.⁶

Although many of the specific provisions differ, both Agreements promote downward harmonization of health, safety, and environmental standards. They also both impose significant limitations on the goals that countries' may pursue in such standards and the means that they may use to achieve those goals.

#### **A. The Uruguay Round's Harmonization Rules Could Have the Effect of Forcing the U.S. and States to Lower Health, Safety & Environmental Standards.**

In order to promote the harmonization of food safety and other SPS standards, the SPS Agreement requires countries to "base their sanitary and phytosanitary measures on international standards, guidelines or recommendations . . ." SPS Agreement at ¶ 9. Domestic standards that conform to international ones are presumed to be consistent with both the SPS Agreement and GATT, although that presumption may be rebutted. *Id.* at ¶ 10. Domestic standards that do not conform to international ones must satisfy a battery of GATT tests in order not to be considered an unfair trade barrier.

The Agreement permits countries to have food safety measures that achieve a higher level of protection than relevant international standards only in two circumstances. *Id.* at ¶¶ 11, 16-23. These circumstances are discussed below in connection with constraints on the level of protection afforded by food safety standards. Even where a higher level of protection is permissible, the standard, on its face and as applied, must comply with all of the other GATT requirements to pass muster under GATT.

The TBT Agreement requires countries to base technical standards and conformity assessment procedures on international standards, even where they are not yet completed, but their completion is imminent. TBT Agreement at ¶¶ 2.4, 5.4. The only exception is when the international standard "would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems." *Id.* at ¶ 2.4.

Note that the examples are modified by the word "fundamental" and are objective rather than subjective conditions. Noticeably omitted from the list of exceptions is that the international standard provides an insufficient level of protection, a factor specifically listed in an analogous provision elsewhere in the TBT Agreement. *Id.* at Annex 3, ¶ F. Thus, the TBT Agreement substantially limits the reasons that may justify not using an international standard and also allows the legitimacy of a country's objectives to be called into question.

By requiring U.S. standards to be based on international ones, and establishing an entire separate set of rules applicable only to those rules that provide greater public health protection than international standards, the Uruguay Round creates strong incentives for avoid exceeding international standards. The international standards serve as a ceiling, not a floor, curtailing innovative solutions to public health problems that are ahead of the international status quo, but not requiring that any solutions be put into place. In other words, the Uruguay Round contains no incentives, let alone any mandates, that countries, at a minimum, afford the level of protection provided by relevant international standards.

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⁶ The term "standards" is used herein to refer to all laws, regulations, guidelines, requirements, recommendations, inspection, conformity assessment, and other procedures that are covered by the SPS and TBT Agreements. Other Uruguay Round provisions may also affect health, safety, and environmental protections, such as the Agreement on Government Procurement, and the Agreement on Subsidies and Countervailing Measures.

Such downward harmonization would have alarming public health consequences. International standards are generally developed in secret with extensive industry input, but no public oversight or participation. Thus, they are often weaker than U.S. standards.⁷

The SPS Agreement identifies the Codex Alimentarius Commission ("Codex") as the international body establishing presumptively trade legitimate food safety standards. Codex is a U.N. body established in 1962 primarily to facilitate international trade by addressing health issues in the trade context. It is made up of government officials, who participate with the active assistance of industry advisors. National industry food giants, such as Hershey Foods, Nestle U.S.A., Kraft General Foods, Coca Cola Company, and Pepsi Company, and trade groups, such as Grocery Manufacturers of America and the National Food Processors Association, have been present in full force at Codex meetings⁸. Codex lacks the power to compel the production of data and has no public health standard to which to must conform its decisions. Many Codex standards are less protective of public health than U.S. standards. Thus, some Codex standards allow residues of pesticides that have been banned in the United States, such as DDT on meat, grains and dairy products. Because the U.S. bans exceed Codex standards, they must satisfy all the other GATT mandates.

## **B. The Uruguay Round Imposes Limitations on the Goals the U.S. May Legitimately Pursue in its Standards.**

### **1. Constraints on Food Safety Level of Protection**

The Uruguay Round imposes significant hurdles on a country's ability to provide greater public health protection than that provided by relevant international standards. Thus, higher levels of protection are permitted in only two circumstances.

First, a country may have a higher level of protection "if there is a scientific justification." ¶ 11. Such a justification may be evident only if a country concludes that the international standard is "not sufficient to achieve its appropriate level of protection" based on "an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement." ¶ 11 n.2. In other words, the scientific justification must be based on risk assessment undertaken in accordance with GATT's terms.

Second, a country may have a higher level of protection if it bases that level of protection on a risk assessment undertaken in accordance with GATT, and it achieves consistency in its levels of protection against all risks to human life or health or to animal and plant life or health in its SPS measures. ¶¶ 11, 16-20.⁹ More specifically, countries must "avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade." ¶ 20. The term "unjustifiable" is inherently subjective and value-laden, which invites countries, and ultimately dispute settlement panels to substitute their own judgments for those made by domestic regulators and policymakers.

This prohibition on unjustifiable distinctions in levels of health protection applies apart from the relevance any international standard. Thus, it is applicable where no international standard exists, and it could form the grounds for rebutting the presumption that use of an international standard is consistent with GATT.

U.S. food safety standards may be vulnerable to challenge because of the many

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⁷ The SPS and TBT Agreements require countries to participate fully in international organizations developing harmonized standards. SPS ¶ 12; TBT ¶ 2.6.

⁸ See Ritchie, "GATT, Agriculture and the Environment: The Double Zero Plan," 20 *The Ecologist* 214, 217 (Nov./Dec. 1990); 56 Fed. Reg. 29,050-51 (June 25, 1991).

⁹ It appears that consistency must be achieved among protections against human risks and among protections against plant and animal risks, but not between these two categories of risks. ¶ 20. However, there are widespread disparities in the levels of protection afforded within each of these two categories.



distinctions in the levels of protection afforded in standards dealing with various exposures to pesticides, food additives, microbiological contamination, and food irradiation, particularly when state standards are in the calculus. For pesticides residues in food, 0 risk is permitted for certain exposures to carcinogens, 1 in 1,000,000 risk is allowed for some health effects, including other exposures to carcinogens, and greater health risks are permitted in still other situations. In contrast, there are few standards for fish inspection laying out the level of risk permitted. Moreover, because states are permitted to provide greater public health protection than the federal government, less risk may be tolerated in a particular state.

In addition to avoiding unjustifiable distinctions in levels of protection, countries are admonished to "take into account the objective of minimizing negative trade effects" in setting their appropriate levels of protection. ¶ 19. Of course, many food safety statutes establish a public health mandate that forbids consideration of such trade concerns.

#### SCIENTIFIC AND RISK BASIS REQUIRED FOR FOOD MEASURES

Under the Uruguay Round, food safety measures:

- o must be "based on scientific principles;"
- o must "not be maintained without sufficient scientific evidence;" and
- o must be based on a risk assessment, taking into account risk assessment techniques developed by relevant international organizations. ¶¶ 6, 16-17.

These scientific and risk assessment requirements may jeopardize cutting-edge food safety regulation in areas, such as food irradiation, biotechnology, and the use of growth hormones in beef production, where the scientific evidence is not yet in, but a country wishes to protect its citizens from possible, but uncertain, harm under the precautionary principle. Indeed, the United States claimed that a European Community ban on imports of hormone-treated beef lacked scientific support, and thus was a disguised restraint on trade. Measures such as the Delaney Clause, which prohibits the use of certain carcinogenic food and color additives, are at risk because it is a 30-year-old congressional policy judgment to protect the public from uncertain risks that is now attacked by industry as being scientifically outmoded. As a measure establishing a zero-risk standard, permitting no exposure to certain additives, it is not based on quantitative risk assessment. California's Proposition 65, which requires warnings before exposing the public to cancer-causing substances or reproductive toxins, would be threatened because it was adopted as a popular referendum rather than a regulatory determination "based on scientific principles" and risk assessment.

#### 2. Limitations on Technical Standards Objectives

The TBT Agreement provides as examples of the "legitimate objectives" that may be pursued in technical regulations and standards: "national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment." ¶ 2.2. The TBT Agreement presumes that technical regulations conforming to international ones do not create unnecessary obstacles to trade, if they are adopted or applied for one of these legitimate objectives. ¶ 2.5. For this purpose, the listing is exhaustive.

The listed objectives do not include sustainable development, which was expressly included in the NAFTA as a legitimate standards objectives. NAFTA Article 915. Nor does it include animal welfare, which was intentionally excluded from the SPS text, according to an explanatory paragraph in the last Uruguay Round text. Thus, trade restrictions imposed pursuant to humane slaughter laws would likely be considered unfair trade barriers because they regulate a process unrelated to recognized characteristics of the final product.

#### 3. Extraterritoriality

"Appropriate level of sanitary or phytosanitary protection" is defined with reference to protecting human, animal or plant life or health within its [the country's] territory. In other words, the Uruguay Round does not allow trade restrictions to be imposed in order to protect health or life outside a country's territory.

#### 4. Regulation of Production Processes

One critical trade issue is the extent to which trade restrictions may be imposed products as a result of their processing and production methods. For example, may a

country ban imports of timber that does not come from sustainably managed forests, ban imports of ivory from countries with inadequate elephant conservation programs, ban imports of beef slaughtered in violation of humane standards, ban imports of products produced with ozone-depleting chemicals, ban imports of tuna caught in a way that kills too many dolphins, ban imports of fish caught with large-scale drift nets, or ban shrimp imports caught without turtle excluder devices?

The SPS Agreement defines "sanitary or phytosanitary measure" to include "processes and production methods." Annex A, ¶ 2. Thus, food safety measures may regulate production processes directly related to food safety and other SPS goals. However, since the sanitary and phytosanitary measures are concerned only with risks from pests, diseases, additives, contaminants, and toxins, any SPS processing methods are likely to be related to final products characteristics, as with good manufacturing or good laboratory practices.

In the TBT Agreement, both "standard" and "technical regulation" are defined to include documents that lay down characteristics of goods or their related processes and production methods. TBT Annex 1, ¶¶ 1-2. In other words, process regulations are envisioned where the process is related to the characteristics of a good, which encompasses good manufacturing and good laboratory practice technical regulations and standards. Technical regulations and standards may also deal with packaging and labeling requirements that apply to process or production methods. *Id.*

One of the cornerstones of GATT is that like products must be accorded treatment no less favorable than that accorded like domestic products and like products imported from other countries. This nondiscrimination principle is expressly made applicable to technical regulations in the TBT Agreement. ¶ 2.1. It has generally been interpreted under GATT to preclude imposing restrictions on products based on the way they are produced. In the tuna-dolphin challenge, a GATT panel concluded that the U.S. ban on imports of tuna caught by methods that kill too many dolphins were impermissible because they were based on the way the tuna was caught, not any inherent characteristics of the tuna itself.

Nothing in the TBT Agreement rejects this approach. To the contrary, other TBT provisions require that product requirements be stated in terms of performance rather than design or descriptive characteristics, wherever appropriate. ¶ 2.8. Thus, where the process itself is regulated to prevent health or environmental harm, e.g., emissions from production or worker safety, product restrictions will likely be considered unfair trade barriers.

## **B. THE URUGUAY ROUND LIMITS THE MEANS USED TO ACHIEVE LEGITIMATE HEALTH, SAFETY AND ENVIRONMENTAL GOALS**

The Uruguay Round imposes significant limitations on the trade restrictions that may be imposed as part of domestic regulation. Often the most effective health, safety, and environmental measures impose greater trade restrictions than less effective alternatives. For this reason, constraints on the means that may be used to achieve legitimate goals could be devastating to strong protections.

### **1. Food Safety Standards**

Food safety measures may be "applied only to the extent necessary to protect human, animal or plant life or health." ¶ 6. In addition, countries must ensure that their food safety measures "are not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility." ¶ 21. A footnote states that "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade." ¶ 21 n.3.

The alternative measures need only be technically and economically feasible, they do not need to be politically feasible. This distinction is critical. In a pending GATT challenge to the U.S. fuel economy penalties and the gas guzzler tax, the European Community has argued that a carbon tax would be a less trade-restrictive way to promote fuel efficiency. However, when President Clinton proposed such a tax, it proved to be political infeasible. Its technical and economic feasibility might make more hardhitting fuel economy regulations an unfair trade barrier.

Under the least trade-restrictive alternative test, any product ban may be called into

question, since bans are the most trade-restrictive measures available. Thus, a ban could be challenged on the ground that permitting small exposures, labeling foods, or washing or other handling precautions would meet the level of protection.

An EPA ban on pesticide residues on a particular food could be challenged on the ground that permitting trace residues would achieve the same level of protection. The Circle of Poisons Prevention bill, which, if enacted, would ban the export of certain hazardous pesticides in part to prevent them from being used on foods exported back to the U.S. A challenger could argue that the export ban is not necessary because permitting the export but monitoring for the residues would achieve the chosen level of protection. EPA's coordination policy precludes carcinogenic pesticides on raw commodities, where the pesticide concentrates in processed foods. The Delaney Clause prohibits residues of the carcinogenic pesticides only in the processed foods, but EPA has extended the pesticide ban to the raw commodities because it does not know which tomatoes will be used to make tomato sauce. A challenger could argue, as industry has, that this policy is not "necessary" because FDA could monitor the processed foods for the residues instead. A ban on dyes, genetically altered produce, or fish with lead levels that are safe for everyone, except pregnant women and children or other vulnerable subpopulations, might be challenged on the ground that warnings would suffice.

The "taking into account technical and economic feasibility" language may prevent a country from using its chosen means because of economic considerations. It might also preclude the use of technology forcing regulations that impose stringent requirements in order to force technological improvements, such as EPA's phaseout of certain uses of the pesticide carbofuran, even though substitutes were not available when the phaseout was established, or a ban the use of lead solder in food cans five years from now in order to force industry to come up with alternatives.

Aspects of the 1990 Nutritional Labeling and Education Act might be vulnerable to a trade-restrictive alternative challenge. Thus, mandatory labeling designed to provide consumers information about carcinogens or potentially harmful additives, such as salt, MSG, nitrites, or sulfites, could be challenged on the ground that voluntary labeling would suffice or that not all foods need to be covered by mandatory requirements. Indeed, both Japan and the European Community have already made claims that the mandatory nutritional labeling is an unfair trade barrier.¹⁰

## 2. Technical Standards

The TBT Agreement also embraces the unnecessary obstacles to trade and least trade-restrictive alternative tests. Thus, technical regulations and conformity assessment procedures may not be "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." ¶¶ 2.2, 5.1.2. Technical regulations may not be "more trade-restrictive than necessary to fulfill a legitimate objective, taking into account the risks non-fulfilment would create." ¶ 2.2. This sentence is immediately followed by factors that must be taken into account "[i]n assessing such risks," thereby envisioning a risk assessment or cost-benefit analysis. Conformity assessment procedures may not be more strict or applied more strictly than necessary to give confidence that products conform to technical regulations and standards. ¶ 5.1.2.

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¹⁰ The Uruguay Round also prohibits arbitrary or unjustifiable discrimination between countries where identical or similar conditions prevail, and the application of measures in a manner that constitutes a "disguised restriction on international trade." ¶ 7. A narrow construction of the latter requirement would simply require that the measure be a matter of public record or that it be the result of an open rulemaking or administrative proceeding. Under such a construction, FDA action levels, which indicate when FDA will enforce pesticide residue and food additive standards, may be open to challenge. A broader construction might permit challenges to a food safety measure on the ground that its underlying effect is to restrict trade. For example, a ban on listeria in cheese, which is only imported, while listeria is not banned in other products, might be viewed as a hidden trade restriction.



In addition, technical regulations may "not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner." ¶ 2.3.¹¹

Under these provisions, Canada could argue, as it did in an *amicus* brief, that a phaseout of all asbestos should not apply to the asbestos produced in Canada because it presents less of a health risk, which can be controlled through use restrictions, than the other types at which the phaseout was principally directed. If (as it once did), the Department of Transportation required trucks to use antilock brakes, a challenger might argue that anti-jack knife devices would have the same effect, even though it takes much longer to stop the truck with them. If the U.S. decided to ban asbestos-lined brakes because U.S. workers are exposed to the asbestos when they install or repair the brakes, another country could argue that the ban is unnecessary because the workers could use protective clothing and ventilation to limit the risk.*If Congress bans toy balls with a diameter less than 1.75 inches for small children, a challenger could argue that the measure is unnecessary because of inadequate evidence of harm or that hard plastic or wood balls should not be subject to it. If OSHA phased out cadmium batteries because the cadmium leaches into ground water in landfills, a challenge could be mounted because most substitutes also contain heavy metals that would present similar problems. Recycling schemes and packaging requirements may be vulnerable. In past trade challenges, the European Court of Justice invalidated a component of a Danish recycling scheme requiring the use of reusable containers that could be handled by facilities in Denmark, and the U.S. complained that Ontario's imposition of higher taxes on recyclable beer containers than on reusable ones discriminates against U.S. beer, which is sold largely in cans, as compared with Canadian beer, which is sold largely in bottles.

Our standards are in jeopardy even if they are undertaken pursuant to international environmental agreements, since there is no exception to the Uruguay Round's requirements for such standards. Thus, bans on ozone-depleting chemicals pursuant to the Montreal Protocol on Substances that Deplete the Ozone Layer or on trade in endangered species pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora would be vulnerable under the least trade-restrictive alternative test.

#### C. The Uruguay Round Requires the U.S. to Permit Imports that Do Not Comply with U.S. Health, Safety & Environmental Standards

The Uruguay Round requires countries to permit imports that do not comply with their own food safety standards where they satisfy different, but "equivalent," standards or processes. SPS Agreement ¶ 14. Countries must also give positive consideration to accepting as equivalent technical regulations that differ from their own, but fulfill the objectives of their own regulations. ¶ 2.7.

This requirement invites wholesale circumvention of U.S. law. Even if Congress has established a standard or an agency has promulgated regulations prescribing the conformity assessment procedures that will be used, imports may nonetheless be permitted. This would be done under the amorphous concept of equivalency, which calls for a subjective comparison of different standards without any clear guidelines for the process to undertake or the factors that must be considered.

Under the U.S.-Canada Free Trade Agreement, the U.S. Department of Agriculture decided that Canadian meat inspection procedures were equivalent to ours, even though the U.S. tests end products for listeria contamination, while Canada regulates the work environment in which the food is processed, and Canada does not control or test for drugs approved for use in Canada but not in the U.S. Meat imports were allowed into the U.S. under a cursory reinspection system. The General Accounting Office charged that the documentation did not support the conclusion that Canadian meat inspections were equivalent to the U.S. system, and meat inspectors complained that Canadian producers were taking advantage of the cursory reinspection and shipping contaminated meat. Under the U.S.-Canada Free Trade Agreement, Canada challenged Puerto Rico's refusal to permit imports of milk that did not comply with Puerto Rico's milk sanitation certification and

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¹¹ As discussed above, the TBT Agreement also provides that product requirements must be based on performance rather than design or descriptive characteristics. ¶ 2.8.

inspection procedures. A trade panel ruled against the U.S. on the ground that Puerto Rico should not have barred Canadian milk imports until it had determined that Canada's milk sanitation certification and inspection procedures were not equivalent to Puerto Rico's.

The NAFTA implementing legislation made substantive amendments to U.S. meat, poultry, and live animal inspection laws to permit imports from NAFTA countries that do not comply with those laws. For example, the law (§ 361(b)-(c)) allows imports from Canada and Mexico to be excepted from 21 U.S.C. § 104 and § 105, which currently prohibit imports of diseased or infected animals or animals exposed to infection within 60 days prior to export and require official inspections of animals to ascertain whether they have been infected or exposed to contagious diseases.

The Uruguay Round also requires that countries make all other member countries subject to the same food safety inspection procedures. This is so even if there has been a legitimate reason for treating the country differently. For example, special inspection procedures have been established more Mexican produce because it has higher DDT residues than domestic produce and than permitted under U.S. law.

#### **D. The Uruguay Round Jeopardizes State Health, Safety and Environmental Measures**

The Uruguay Round's restrictions on food safety and technical standards apply to state and local laws. The least restrictive alternative test could have particularly severe consequences for state regulations. Indeed, in a recent GATT dispute that did not involve GATT's health or natural resources exceptions, the panel concluded that a requirement imposed by only five states was not "necessary" because other states had found "alternative, and possibly less trade restrictive, and GATT consistent, ways of enforcing their tax laws." *United States – Measures Affecting Alcoholic and Malt Beverages* ¶ 5.52 (1992) ("Beer II"). This rationale could be devastating if it were applied to the many health and environmental statutes that permit, but do not require, states to provide greater health or environmental protection than the federal government.

National governments must take affirmative actions to ensure that subnational governments comply with the Uruguay Round. The SPS Agreement makes countries "fully responsible . . . for the observance of all obligations set forth herein." ¶ 45. They must "formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies." *Id.* In addition, they "shall not take measures which have the effect of, directly or indirectly, requiring or encouraging . . . local governmental bodies to act in a manner inconsistent with the provisions of this Agreement." *Id.* Similar obligations are imposed under the TBT Agreement, ¶¶ 3.1, 3.4, 3.5.

Weaker commands have been construed to require the federal government to do everything within its constitutional power to bring state laws into compliance with a trade agreement.

#### **6. Conclusion**

The implications of approval of this new international institution, the WTO, are far reaching, and from a citizens' perspective extremely worrisome. It is inevitable that different policy goals will at times conflict, for instance goals of maximizing trade and goals of public health and environmental protection. However, the decision about which policy goal should take precedence in a particular instance should be decided by those who will live with the results. Under the Uruguay Round, those decisions are largely shifted away from citizen control and domestic democratic bodies to a negotiating committees and a dispute resolution body located in Geneva, Switzerland which operates in secret and without the guarantees of due process and citizen participation found in domestic legislatures and courts. Moreover, the WTO's substantive trade rules that would be interpreted by the dispute resolution body place trade expansion over other policy goals in almost every instance.

The congressional decision about whether or not the United States should join the World Trade Organization is as much as political and legal decision as an economic decision. Current congressional debate of the Uruguay Round has failed to include the broader implications the WTO would have on the future ability of the Congress and other legislative bodies around the world to implement policies to regulate commercial activity to guarantee their inhabitants' well being and health, as well as the future of the global environment.

Chairman GIBBONS. Thank you, Ma'am.  
Ms. Durbin.

**STATEMENT OF ANDREA DURBIN, TRADE POLICY ANALYST,  
FRIENDS OF THE EARTH, USA**

Ms. DURBIN. Thank you, Mr. Chairman.

I am Andrea Durbin, trade policy analyst with Friends of the Earth. Founded in 1969, Friends of the Earth is an international environmental organization with organizations in 52 countries around the world. We appreciate the opportunity to appear before the committee today.

Mr. Chairman, the environmental community is united in its criticism of the environmental problems in the GATT. If adopted as presently negotiated, this GATT would be a step back from the progress made in NAFTA, as well as pose serious risks to global environmental protection and decisionmaking.

Based on our commitment to environmental protection, Friends of the Earth, USA, is opposing the Final Agreement of GATT, and we urge Congress to fully consider the environmental ramifications of this agreement. Furthermore, we urge Congress to insist on environmental provisions and a comprehensive work program for the newly created World Trade Organization before voting on the agreement.

Friends of the Earth's decision to oppose the GATT should not be interpreted as a position against trade. We are, however, making a judgment about how the Final Agreement will impact the environment and what needs to be done in order to ensure that trade protects the global environment and becomes environmentally sustainable.

My colleagues today have discussed the problems with GATT regarding threats to existing and future environmental laws and the public participation in democratic problems with institutions. We have also discussed these points in depth in our written testimony because they are critical to us in our decision to oppose this GATT. Today, I will touch upon how these trade rules are at odds with our goals for environmentally and socially sustainable development.

In its 7 years of negotiations, the GATT has proceeded with minimal regard for its environmental consequences. During the same time, the United States participated at the Earth Summit at Rio and committed itself to adopting policies that will lead to more sustainable development. It is clear that neither of these goals, free trade and sustainable development, were reconciled in the negotiation process for GATT.

Many of the direct impacts of the GATT are largely unknown because a comprehensive environmental impact statement has not been done. An EIS would provide Congress and the American public with critical information about the full impacts of such an agreement. For example, an EIS would document how the new multilateral trade rules will affect a number of areas, including two areas that we will discuss today, investment rules and the protection of natural resources.

The new investment rules will increase investment, but the agreement does not guarantee that those investments will be sound



environmentally or that they will not cause environmental problems. Studies have confirmed that there is a strong temptation to avoid environmental compliance in countries with weaker environmental enforcement structure. The debate around NAFTA highlighted how industries have violated and continued to violate Mexican and U.S. environmental laws. A study of those industries found that companies increase their profit margins by 100 percent when they did not comply with environmental requirements. The result may be higher profits for industry, but at a cost of more pollution and environmental problems elsewhere.

The investment rules in GATT do not require that investors meet certain environmental standards. Neither are there requirements that countries cannot lower or deviate from their environmental laws or enforcement in order to attract investment.

A second effect is that competing industries operating in the United States which comply with U.S. environmental laws will suffer competitively if their competitor outside the United States avoids paying similar environmental costs. A U.S. company may then move its operations outside the United States or put pressure on Congress and the administration to reduce the environmental requirements it must meet.

Similar problems exist for the conservation of natural resources. GATT rules promote natural resource exports without a discussion of how those resources are extracted, at what rate, and at what impact to the national and global environment. According to the way growth is currently measured, if a country cuts down all of its trees and exports them, it will appear as an increase in the gross domestic product. The accounting mechanism does not factor in the loss of forest resources, the effects of soil erosion, the loss of habitat and biological diversity, or the adverse impacts on climate.

The shortsightedness of the conventional accounting mechanism in existing trade rules is obvious which is why Congress has taken steps to get the World Bank and the IMF to develop new ways to measure economic growth in a performance.

The GATT encourages countries to export more, but there are no guidelines to promote more sustainable practices or harvesting methods. Nor are there incentives to adopt these methods.

One of the GATT's most significant proposals is to establish a World Trade Organization. From an environmental perspective, the current formation of the WTO and its draft work program does not even begin to address the interconnectedness of trade environment issues. Nor does it set forth a comprehensive plan to resolve some of the conflicts. Bluntly, it does not fulfill the administration's commitment that environmental and trade issues will be reconciled.

We urge Congress not to let this issue go by and be left to chance. It is absolutely necessary that the WTO encompass a strong environmental platform and directives for a permanent committee to resolve some of the conflicts, and Congress should have that assurance before it votes on this agreement.

At the conclusion of the December talks, the GATT members agreed to draw up a plan to address environmental issues by April's ministerial meeting. To contribute to that process, Friends of the Earth is developing recommendations that should be considered. Our initial recommendations are attached to this testimony.

Chairman GIBBONS. We will make them a part of the record.

Ms. DURBIN. I ask your permission to make our full written testimony a part of the record.

Chairman GIBBONS. Certainly.

Ms. DURBIN. Thank you, Mr. Chairman.

We strongly urge Members of Congress to raise the level of debate and imperativeness of instituting trade rules that protect the global environment. It is critical that Congress oversee this process, pay attention to the development of the work program, and set expectations for what should be achieved at the April's ministerial meeting. Furthermore, Congress should fully understand the environmental ramifications of this agreement before it votes.

Mr. Chairman, with your permission, I would also like to insert into the formal record the Friends of the Earth study I referred to in our testimony and another statement by another environmental group, National Wildlife Federation, who is also opposing this GATT.

[The prepared statement and attachments follow:]

Mr. Chairman, Members of the Subcommittee:

I am Andrea Durbin, Trade Policy Analyst for Friends of the Earth, USA. Founded in 1969, Friends of the Earth is an international environmental organization, with affiliated groups in 52 countries around the world.

We appreciate the opportunity to appear before the committee today to provide an environmental analysis of the Final Agreement of the Uruguay Round of GATT.

The environmental community is unanimous in its criticism of the environmental problems in the GATT agreement, and the failure of the negotiators to even meet the standard of what was achieved in the NAFTA for the environment. If adopted as presently negotiated, this GATT would be a step back from the progress made in NAFTA, as well as pose serious risks to global environmental protection and decision-making. Based on our commitment to environmental protection, Friends of the Earth-US strongly urges the U.S. Congress to oppose the adoption of the Final Agreement of GATT.

In our appeal for a rejection of the GATT, Friends of the Earth is not taking a position to oppose trade. We are however making a judgment about how the Final Agreement will impact the environment and what needs to be done in order to make liberalized trade protect the global environment and become environmentally sustainable. The assumption that more trade will lead to wealth, and therefore an improved well-being for all, must no longer go unchallenged. Perhaps it is time to recognize that free trade, in its purest form, may not serve our goals of improving the quality of life for present and future generations to come. In fact, these principles may be harming our progress toward that goal.

We urge Congress to become active in this debate and raise questions and expectations for what can still be achieved between now and when the agreement is signed this April, and about what are the principles we want trade rules to reflect.

In evaluating the effects of the Final Agreement on the environment, we have looked at four areas:

1. Whether or not the GATT rules protect a country's right to set environmental standards higher than international standards, so long as they are applied equally and not with the intention of impeding trade;
2. Whether or not the GATT will promote trade that protects the environment, conserves natural resources and leads to environmentally sustainable development;
3. Whether or not the GATT rules will allow for openness, transparency and environmental representation in its decision making processes;
4. Whether or not the World Trade Organization (WTO) will have a strong environmental mandate, environmental directives and a plan of operation focused on resolving broader trade and environmental issues.

As of today, the Final Agreement of GATT fails to provide adequate environmental safeguards in each of these areas.

#### I. RISKS TO U.S. ENVIRONMENTAL, HEALTH AND SAFETY STANDARDS

The Final Agreement of GATT sets forth language and criteria that will allow our trading partners to file a complaint against a U.S. environmental law, forcing a



judgement of whether or not that law meets the requirements of the GATT or if it is a "non-tariff trade barrier".

Regrettably, the criteria that will be used to judge an environmental law or standard is unnecessarily narrow, favoring the principles of free trade rather than environmental principles. The flawed language could result in legitimate environmental and health laws being challenged and possibly found to be inconsistent with current GATT rules.

If a law is found to be contrary to the terms of the GATT, the offending country will be required to change its law to adapt to the panel's ruling, or face penalties. Because of political and economic pressures, such a ruling would put tremendous pressure on the U.S. to conform with the GATT ruling and change the law. A country that refuses to conform with a GATT ruling and maintains its contested law could be forced to pay compensatory measures or face sanctions.¹

The environmental community is concerned about onerous requirements that environmental standards must meet for GATT, such as the necessity that economic risk assessments be done or that laws are based on scientific principles, when not every law passed is based on these criteria.²

Another biased requirement is that a law not be "more trade restrictive than necessary".³ While this kind of requirement may work for standards regulating commerce, it is not always possible or desirable to institute the least trade restrictive environmental standard and achieve equivalent environmental protection. The GATT rule does not recognize other factors about why a particular law was instituted as opposed to another, such as the political or economic feasibility of passing a different version.

The likelihood of countries targeting U.S. environmental laws for future disputes is great. Already, the U.S. is defending three environmental laws that are being challenged in GATT by the European Union: the Corporate Average Fuel Economy Standards (CAFE) for automobile fleets, the Gas Guzzler Tax on inefficient cars and the Marine Mammal Protection Act. The decisions on all three of these cases should be released in the next few months.

However, these are not the only cases expected. The European Union has also complained about other laws, including the High Seas Driftnet Act and California's Safe Drinking and Water Toxic Enforcement Act. Criticism of California's state law raises the question of whether or not state and local laws are safe from the rules of GATT. But the Final Agreement explicitly states that the Members of the GATT must take measures to ensure that the standards of state and local governments conform with the standards set forth in the GATT, on Sanitary and

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¹ Dispute Settlement Understanding, article 22.

² Agreement on Sanitary and Phytosanitary Measures, article 16

³ Agreement on Technical Barriers to Trade, article 2.2. In SPS, but not in TBT, the U.S. negotiators were able to get the parties to clarify the "not more trade restrictive than required", by footnoting article 21, note 3 that "a measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of protection and is significantly less restrictive to trade". Despite the clarification, the environmental concerns remain.

Phytosanitary Measures and Technical Barriers to Trade⁴, meaning that state and local laws are susceptible to challenge.

Language problems embodied in the GATT should raise many flags in lawmakers minds as they consider approval of the Final Agreement. We urge Congress and the Administration to seek a moratorium on any challenges to U.S. federal, state or local environmental or health-based law until acceptable criteria can be negotiated and approved that support environmental goals. President Clinton has already said he will seek resolution to these problems by pushing for a Green Round of GATT. Until that time, U.S. environmental laws, which have been passed and adopted in a democratic process, should not be open for attack in a separate forum by our trading partners.

## II. SUSTAINABLE DEVELOPMENT & GLOBAL TRADE RULES AT ODDS

The objective of the seven years of global trade talks was to liberalize international trade rules, but the process proceeded with minimal regard for its environment consequences. During the same time, the U.S. participated at the Earth Summit in Rio and committed itself to adopting policies that will lead to more sustainable development.

It is clear that neither of these two goals, free trade and sustainable development, were reconciled in the negotiation process for the GATT. Instead, we have an agreement which directly conflicts with the goals of sustainable development and will exacerbate environmental problems worldwide. It is our hope that the two paths can finally converge because the establishment of sound trade rules is crucial for achieving development that is more sustainable and equitable, environmentally and socially.

Many of the direct impacts of the GATT are largely unknown because a comprehensive environmental impact statement (EIS) has not been undertaken by the Administration, as the National Environmental Policy Act (NEPA) requires for any major federal action. An EIS would provide Congress and the American public with critical information about the full impacts of such an agreement on the environment.

But perhaps more importantly, if undertaken in accordance with NEPA procedures, an EIS would analyze the environmental impacts from the outset, and help policy makers and negotiators determine alternative proposals that can mitigate or prevent potential problems. This would allow decision makers to identify and adopt the least environmentally harmful way to engage in trade.

Since it appears that opening up markets and negotiating trade agreements with other countries has become a fundamental part of the Administration's economic and foreign policy platform, it should complete environmental analyses of trade agreements from the outset of negotiations, so that the information can be incorporated in the negotiations. As soon as the Administration announces its decision to begin negotiations with Chile to join the NAFTA, it should immediately begin the process of drafting an environmental impact statement.

We urge Members of Congress to make it known that this information is critical for Congress' full understanding of the range of impacts trade agreements might have on the environment. We believe that Congress and the American public are entitled to the complete information.

A comprehensive environmental analyses would document how the new

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⁴ SPS annex 1, article 1 and TBT article 3.1.

multilateral trade rules will affect a number of areas, including investment decisions and locations, the rate of natural resource exports and changes in other industrial and agricultural practices. All of these areas are critical to investigate further because they go to the heart of this question: how can trade rules be more environmentally and socially sustainable?

#### A. Investment

In the eyes of economists, a major accomplishment of the Uruguay Round of GATT was to liberalize the rules for foreign investment. These new rules will lead to increased investment, but they do not guarantee that those investments will be sound environmentally, or that they will not further contribute to environmental problems. The Agreement on Trade Related Investment Measures is silent on the issue of establishing environmental requirements for investors.

While the evidence is not conclusive that companies base an investment decision on lax environmental laws or enforcement, it is confirmed that there is a strong temptation to avoid environmental compliance in countries with a weaker environmental enforcement structure.⁵ Studies have also shown that industrial flight or migration is more likely where environmental costs for certain industries that face higher environmental costs for investment in technologies or compliance measures.⁶

The debate around NAFTA highlighted how maquiladora industries have violated and continue to violate Mexican and U.S. environmental laws. A study of those industries found that companies increased their profit margin by 100 percent when they did not comply with the environmental requirements.⁷ Thus, there is a strong economic incentive for companies to violate environmental laws when they are not held directly accountable for their violations. The result may be higher profits for industry, but at a high cost of more pollution and environmental problems elsewhere.

The investment rules in GATT do not require that investors meet certain environmental standards or provide the community and public with information about pollutants or emissions from the operations. Neither are there requirements that countries cannot lower or deviate from their environmental laws or enforcement in order to attract investment. At a time when countries, particularly developing countries, are struggling to attract investment to earn revenue and provide employment, it is conceivable that countries will choose to weaken or avoid instituting environmental standards to provide jobs. The unintended environmental effect of the GATT will be to provide incentives for polluting operations to relocate to areas with lower environmental standards, creating pollution havens in other countries.

A second effect is that competing industries operating in the U.S. which abide by U.S. environmental laws, will suffer competitively. If their competition avoids paying the same environmental costs it must pay, the competitor will gain a competitive advantage. This puts the company in the U.S. in a difficult position. It may choose to move its operations outside the U.S., or to put pressure on Congress and the Administration to reduce the environmental requirements it must meet so that it can compete more effectively.

The investment rules in GATT completely ignore the environmental impacts of

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⁵ Friends of the Earth study, "Standards Down, Profits Up", January, 1993

⁶ Summary Report of the Workshop on Environmental Policies and Industrial Competitiveness, January 28-29, 1993, OECD, pg 7.

⁷ FoE Study, "Standards Down, Profits Up", January 1993.



investment decisions. Furthermore, they permit trade that will allow competitive advantages to be gained at the expense of environmental costs being externalized and avoided.

## B. Natural Resource Use and Production Methods

Many of the parties to GATT are dependent on the export of natural resources. The Final Agreement will increase the exchange of goods between countries, including natural resource exports, but there is no discussion or regard for how those resources are extracted, at what rate and at what impact to either the national or global environment.

According to the way growth is currently measured, if a country cuts down all of its trees and exports them, it will appear as an increase in the Gross Domestic Product. The accounting mechanism does not factor in the loss of the forest resources, the effects of soil erosion, the loss of habitat and biological diversity or the adverse impacts on climate.

The short-sightedness of the conventional accounting mechanism and existing trade rules is obvious, which is why Congress has taken steps to get the World Bank and the International Monetary Fund to develop new ways to measure economic growth and performance. It is inconceivable that a country should be rewarded economically for clearcutting its forests for export, but that is exactly what the Final Agreement of GATT does. Countries are encouraged to export more, but there are no guidelines to promote more sustainable practices or harvesting methods, nor are there incentives to adopt these methods because the trade rules are encouraging countries to increase exports and to export more quickly, not to slow their exports and extract resources at a more sustainable rate and in more sustainable ways.

As a result of the export oriented economic model that has been promoted by the World Bank and International Monetary Fund, Ghana, for instance, is rapidly being transformed into a net timber importing country, despite once having a substantial forest cover. Because Ghana was so heavily dependent on the export of timber, its forests have been devastated. The push for exports lead to logging practices which caused significant environmental problems, such as the degradation of land, leading to soil erosion, and its impact on water quality and wildlife, but none of these costs have been quantified when determining its annual growth rate.⁸

In fact, the current rules do not even encourage countries to take measures to protect natural resources. GATT precedence prohibits countries from adopting policies that will affect other countries resource practices. The GATT rules do not allow a country to restrict imports that are harvested or produced in an environmentally harmful manner.

The precedence was set in 1992. It was then that a GATT panel ruled that the U.S. ban on tuna from Mexico was contrary to GATT rules because it was a ban on the way in which the tuna was being harvested (by killing too many dolphins) rather than on the safety of the tuna itself. With that ruling, the GATT established a precedent that countries cannot base import decisions on how a product is produced. But many environmental issues are related to how a product is produced, such as whether or not toxics are released into the atmosphere, wildlife are killed or forest systems are destroyed.

If we are ever to be successful in setting trade rules that will lead countries to adopt a more sustainable path of development, process and production methods will have to be recognized as legitimate measures to restrict imports, and countries will be

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⁸ Report by Friends of the Earth-UK and Friends of the Earth-Ghana, 1993.

allowed and encouraged to adopt them.

### III. GATT LACKS BASIC PRINCIPLES: PARTICIPATION AND TRANSPARENCY

In the State of the Union address, President Clinton stated that commitment to democratic principles is important criterion for evaluating our trading relationships.

We believe that trade agreements should recognize those same principles. Trade agreements should be transparent and allow for public participation in developing policies, decision-making, interpretation and dispute resolution. The Final Agreement of GATT fails to recognize and abide by those very basic democratic principles the President deemed so important.

It is now agreed that international trade rules and the environment are interrelated in many ways. Thus, it is critical that environmental non-governmental organizations and the public are allowed to participate in the decision making process on trade agreements in order to make the process more representative and fair, and to address the connections directly.

The Final Agreement of GATT maintains the previously closed process of dispute resolution and decision making. Meetings are closed and there is no public record or notification of the meetings.⁹ There is no requirement that the panel decisions and final reports must be released publicly. Parties can release "non-confidential" information if they so choose, but it is not required.¹⁰ Although the United States Trade Representative's Office has improved its practice of sharing documents with U.S. NGOs, other countries are not following their lead. Access to information is one of the most basic principles of democracy.

A second democratic principle is fair representation. If a dispute panel is established to decide an environmental case, currently there is no requirement that environmental experts serve on the panel. Panels are allowed, but not required, to seek advice from experts on a "scientific or technical matter"¹¹, but the panel itself does not need to represent a full range of views, which would include environmental experts in environmental cases.¹² NGOs have no guaranteed access to these panels.

Without full and fair representation of views, trade experts that have traditionally served on these panels will continue to represent the Parties¹³, despite their lack of the environmental expertise that should be required to present a fair case when an environmental law or standard is in question.

### IV. WORLD TRADE ORGANIZATION: BLIND TO ENVIRONMENTAL GOALS

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⁹ Dispute Settlement Understanding, article 14.

¹⁰ Dispute Settlement Understanding, article 18.2

¹¹ Dispute Settlement Understanding, article 13.2

¹² Dispute Settlement Understanding, article 8.

¹³ Dispute Settlement Understanding, article 8.1. The requirements include "persons who have served on or presented a case to a panel, served as a representative of an MTO Member or of a contracting party to the GATT 1947, ... taught or published on international trade law or policy, or served as a senior trade policy official of a Member".

The Uruguay Round of GATT establishes a World Trade Organization (WTO) which will serve to strengthen and further develop global trade rules. Along the same lines of the World Bank and the International Monetary Fund, the WTO will be a multilateral institution that sets and enforces international trade rules.

Friends of the Earth does not disagree with the need for a stronger multilateral arrangement to regulate world trade, so long as that arrangement facilitates the evolution of the trading regime to become environmentally and socially sustainable.

From an environmental perspective, the current formation of the WTO and its draft work program does not even begin to address the interconnectedness of the issues, nor does it set forth a comprehensive plan to resolve some of the conflicts countries have regarding differing levels of environmental protection.

The WTO could be the forum where many of the questions and problems Friends of the Earth and other environmental organizations have raised before the committee today are addressed.

However, it will not be such a forum unless amendments are made to the draft work program and deadlines set. We urge Congress not to let this issue go by and be left to chance and the political wills of other countries. It is absolutely necessary that the WTO encompass a strong environmental platform and directives for a permanent committee to begin to resolve some of the conflicts.

Much of the resistance to such a position and the establishment of a permanent committee on trade and environment issues is emanating from developing countries, who are concerned that these policies will restrict market access. The WTO should address broad areas of concern of industrialized and developing countries, with the goal of making trade rules truly sustainable.

At the conclusion of the December talks, the GATT members agreed to draw up a plan to address environmental issues. A work program and an institution for the program's execution will be presented for adoption no later than the Ministerial Conference meeting in April, 1994.

To contribute to that process, Friends of the Earth is developing recommendations that should be considered and adopted at the Ministerial Meeting this spring. Our initial recommendations are attached to this testimony.

The success of implementing environmental safeguards in Final Agreement of GATT is critical to how trade and environment issues will be resolved. We strongly urge Members of Congress to raise the level of debate and the imperativeness of instituting rules that protect the global environment. It is critical that Congress oversee this process, pay attention to the development of the work program and set expectations for what should be achieved at the April Ministerial Meeting.



## Attachment to Testimony

FRIENDS OF THE EARTH-US  
RECOMMENDATIONS FOR ENVIRONMENTAL AMENDMENTS  
TO THE WORLD TRADE ORGANIZATION

## Preambular Language of the WTO:

- * *Recognizing* the inter-relationships between international trade policy, ecologically sustainable and socially just development, poverty eradication and environmental protection;
- * *Recognizing* the need to establish international trade rules that will promote environmental protection, the conservation of natural resources and sustainable development;
- * *Recognizing* the need to take a precautionary approach at all times;
- * *Recognizing* the precedence of existing and future international environmental agreements containing multilaterally agreed trade-related provisions;

## Structure of the WTO:

- * The Ministerial Conference shall establish a permanent Committee on Trade and the Environment to examine and resolve trade and environment conflicts, with the objective of setting forth trade rules that recognize the goals of environmental protection and sustainable development, and the right of each country right to adopt strong policies to protect their environment and the global commons, including standards that are more stringent than international standards;
- * The Committee on Trade and the Environment shall be made up of environmental representatives from each Member of the WTO. The Committee shall meet as necessary to carry out its functions;
- * An independent panel of environmental experts will be established to provide advice to the Committee on Trade and the Environment;
- * The Committee on Trade and the Environment will operate in a transparent and open process, by holding open meetings, providing adequate notice for meetings and policy decisions, allowing the public and non-governmental organizations to submit comment and monitor negotiations, and by releasing all documents and reports to the public;
- * The Committee on Trade and the Environment will consult regularly with the United Nations Environment Program and the United Nations Commission on Sustainable Development to develop and seek the most environmentally beneficially and sustainable trade policies;

The Work Program of the Committee on Trade and the Environment should include:

- * Develop a process for environmental analyses of trade rules to be conducted as rules are negotiated;
- * Establish environmental guidelines for investment rules, which would include establishing international environmental standards for investors to meet, require that countries not lower or derogate from their environmental laws to attract investment and provide the public and communities with full information about the investment operations and its environmental and health impact;
- * Agree that each country will recognize a moratorium on challenges to domestic environmental, health or safety laws until the Committee negotiates new criteria for such standards to meet;
- * Establish rules for the process and production methods;
- * Promote trade rules which recognize the importance and value in the conservation, protection and efficient use of natural resources and energy;
- * Develop an ecologically adjusted pricing mechanism so that goods and products become more reflective of their full environmental cost in the market, including the energy costs of transporting products and the impacts of increased transportation on air and water quality;
- * Develop a "green" tax on all traded goods that will be transferred to developing countries that have difficulty meeting the requirements set forth, or that need additional assistance to develop environmental standards and enforcement structures;
- * Actively promote increased environmental cooperation globally, the transfer of technology and resources and develop compensatory financing mechanisms for developing countries to raise environmental standards;
- * Together with the World Bank and the International Monetary Fund, examine the environmental and social impacts of structural adjustment policies in developing countries and identify ways to ease their negative effects. Such policies encourage the export of products, particularly natural resources, to earn foreign exchange;
- * Address the debt problems of developing countries which constrain countries from establishing environmental laws and structures to ensure enforcement, and increase their dependence on the export of natural resources, by working with the World Bank and the International Monetary Fund to evaluate the environmental impacts and lessen the debt burdens of developing countries;
- * Establish criteria that preserves the right of each Member to use unilateral trade measures to protect the environment;
- * Evaluate how GATT's agricultural policies impact sustainable agriculture practices and rural communities, and develop recommendations that will lead to more sustainable agricultural practices worldwide, including examining how subsidies in industrialized countries affect farmers in developing countries;
- * Examine how intellectual property rights rules will affect the preservation and conservation of biological resources, including its impact on the Biodiversity Convention. Develop policies that will ensure that biological resources are protected and that the rights of indigenous people and knowledge is recognized.

Address how liberalized trade rules may increase the trade in illegal wildlife and plant species, or allow for the introduction of exotic species into non-native habitats;



## BRIEFING SHEET

# The Multilateral Trade Organization (MTO) Proposal:

**Recommendations for amendments to ensure that the MTO proposal promotes ecologically sustainable and socially just development**

### EXECUTIVE SUMMARY

A little-known proposal to create a new and potentially powerful Multilateral Trade Organization (MTO) is contained in Arthur Dunkel's Draft Final Act, the text at the heart of the current Uruguay Round of GATT negotiations [1].

Friends of the Earth International (FoEI) recognizes the need for stronger institutional arrangements for the regulation of world trade, so long as those arrangements facilitate the evolution of a trading regime that is geared to ecologically sustainable and socially just development in all countries. FoEI believes that the existing MTO proposal fails to establish such an institution.

Thus, the purpose of this briefing sheet is not to argue against an international trade organisation per se, but to counter the GATT's notorious

secrecy by providing decision-makers and non-governmental organisations with the detailed information they need to amend the current draft.

It is hoped that this action will encourage further, transparent negotiations, that could result in the establishment of an institution with the capacity to encourage the development of trade rules that are sensitive to and promote ecologically sustainable and socially just development.

However, the establishment of a new international institution is not a matter to be taken lightly. FoEI recommends that the MTO proposal is delinked from the Uruguay Round and considered separately.

Annex IV in the Draft Final Act should be replaced with a commitment to consider, at length and in detail, the mandate and structure of an international trade organisation to be established at a later date.



Furthermore, any negotiations concerning the MTO should be conducted in the presence of independent observers, in order to help maximise the accountability of all participants.

FoEI recommends that the MTO proposal, should it be used as the basis for these delinked negotiations, be amended to include:

- preambular recognition of the inter-relationships between international trade policy, ecologically sustainable and socially just development, poverty eradication and environmental protection;
- preambular recognition of the need to take a precautionary approach at all times;
- legally-binding commitments, reinforcing the above preambular statements, in the main body of the text;
- explicit recognition of the precedence of existing and future international environmental agreements containing multilaterally agreed trade-related provisions;
- an article establishing a high-level Trade and Sustainable Development Council, with a very clearly defined mandate, to deal with the practical consequences of the above amendments;
- an article establishing a panel of independent experts to provide advice to this Council;
- a mechanism permitting recourse to an external legal body, such as the International Court of Justice, when independent decisions or advisory opinions are required;
- explicit commitments to increased internal and external transparency;
- an article that ensures the accountability of the institution by giving non-governmental organizations the right to monitor negotiations;
- clarification of the MTO's legal status;
- clarification of the MTO's relationship with the United Nations; and

■ clarification of the degree and nature of cooperation with the United Nations and the Bretton Woods institutions.

## BACKGROUND

In 1944 a United Nations monetary and financial conference was held in Bretton Woods in the United States. The intended outcome was the establishment of three international institutions, the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (the World Bank) and an international trade organisation. However, because of American concerns over loss of sovereignty, the trade organisation was never set up. Instead, participating governments signed a contractual agreement, the General Agreement on Tariffs and Trade.

Since then the idea of an international trade organisation has often been considered. However, the difficulties in and implications of setting up such a powerful organisation have so far proved insurmountable. Perhaps for these reasons, there was no mention of establishing a new international institution in the 1986 Uruguay Round mandate, the Punta del Este Declaration.

It therefore came as something of a surprise to many Contracting Parties when, in December 1991, the Director General of the GATT, published a Draft Final Act (DFA) containing an institutional proposal. Since governments have to accept the entire Uruguay Round package on a take-it-or-leave-it basis, it would seem that this is a last ditch attempt to induce all Contracting Parties to agree to an international trade organisation.

Such an institution could have several benefits for the multilateral trading system. In particular, it would facilitate the negotiating process and accelerate and strengthen dispute resolution, thereby creating a more stable trading environment.

However, the current proposal is ambiguous about both the MTO's purpose and structure. Although it was drafted whilst negotiations in the United Nations Conference on Environment and Development (UNCED) were in progress, it makes no mention at all of the need to integrate

trade, environment and development policies in order to achieve sustainable development (a recommendation of UNCED). In addition, it paves the way for GATT rules to take precedence over international environmental and development agreements (such as the Montreal Protocol on Substances that Deplete the Ozone Layer and the Lome IV Convention).

The implications for individual developing country Contracting Parties are also uncertain. The proposal contains no concessions for developing countries wishing to be members and they will be obliged to make many new and difficult concessions in order to retain their existing GATT rights. Furthermore, stronger links between the MTO and the Bretton Woods institutions (combined with an absence of any formal link to the United Nations) could mean an increase in the influence that those institutions have over developing countries.

Finally, the MTO proposal does nothing to improve the transparency of the international trading system, or the accountability of trade negotiators and officials. As things stand, member countries will cede an unknown degree of sovereignty to an institution that will operate behind closed doors, yet have the power to shape and limit its members' domestic legislation.

It is essential that the issues outlined below are effectively addressed before the MTO is established. In order to do this, negotiations must be delinked from the Uruguay Round in order to ensure that the tit-for-tat GATT negotiating process does not influence the development of such a potentially influential institution.

### THE MTO'S LEGAL STATUS AND SOVEREIGNTY

The stated purpose of the proposed MTO is to

*"develop an integrated, more viable and durable multilateral trading system" [2].*

To this end, negotiators have accorded the MTO an independent, legal personality, with certain legal privileges and immunities.

However, an independent legal assessment, by the

Foundation for International Environmental Law and Development, of the particular language used in the article that establishes the MTO's status (Article VIII), concludes that *"it gives the impression of having been too rapidly put together"* [3]. Also that it is:

*"rudimentary in its treatment of these extremely important issues...Diverse interpretations of the MTO's status are possible. Over a period of time, this may lead to the evolution of an organization whose practice appears far removed from the text of Annex IV" [3] (emphasis added)*

The MTO is frequently portrayed as a simple institutional mechanism that will facilitate the administration of the GATT following the conclusion of the Uruguay Round. But the fact of the matter is that the MTO is explicitly intended to strengthen the international trading system. It will oversee a trade accord encompassing some US\$6,000 billion of world trade in areas as diverse as goods, services, investments and intellectual property rights. An analysis produced for the United Nations Conference on Trade and Development (UNCTAD) remarks that:

*"All possible implications of [the] MTO for the trading system are much broader than simple integration of the Uruguay Round results" [4]*

Uncertainty about the potential status of the MTO has also been brought into question by the prominence accorded it by the GATT's new Director General, Peter Sutherland, who has stated that the GATT, and the MTO which could succeed it, should become

*"a major organisation in world governance" [5].*

The current MTO proposal also states that Members:

*"shall endeavour to take all necessary steps, where changes to domestic laws will be required to implement the provisions...to ensure conformity of their laws with the agreements." [2]*

Thus, on concluding the Uruguay Round, Contracting Parties will voluntarily cede a certain amount of sovereignty to the MTO. However, since the legal status of the MTO is unknown, so too is the precise degree of

sovereignty that each Contracting Party will effectively relinquish.

Given the potential influence that such an institution could wield over global economic affairs, and the associated consequences in terms of environmental protection and the economic development of the poorest countries (see below), transparent discussion about and clarification of the MTO's legal status is an absolute prerequisite to any further developments.

### THE MTO AND SUSTAINABLE DEVELOPMENT

In June 1991, member governments of the Organization for Economic Cooperation and Development (OECD) stated that:

*"unlike sustainable development, free trade is not an end in itself."* [6]

In June 1992, governments participating in the United Nations Conference on Environment and Development (UNCED) agreed that they should:

*"strive to meet the following objectives, through relevant multilateral forums, including GATT, UNCED and other international organisations:*

*(a) To make international trade and environment policies mutually supportive in favour of sustainable development; [and]*

*(b) To clarify the role of GATT, UNCTAD and other international organizations in dealing with trade and environment-related issues"* [7]  
(emphasis added)

In June 1993, however, the draft MTO proposal (initiated by governments participating in both of the above fora) fails to make any attempt to ensure either mutual support or role clarification. In fact, environmental protection and sustainable development are not mentioned at all.

Although there has been some discussion about the uncertainty that exists concerning the exact meaning of the words "sustainable development", it should be noted that this has not prevented the use of such terminology by *inter alia* the OECD,

Agenda 21 (above) and the European Bank for Reconstruction and Development (EBRD), whose charter explicitly states that one of its functions is:

*"To promote in the full range of its activities environmentally sound and sustainable development..."* [8]

The ACP-EEC Lome IV Convention also provides a clear lead in this respect, requiring its Parties to:

*"Recognize that priority must be given to environmental protection and the conservation of natural resources, which are essential conditions for sustainable and balanced development from both the economic and human viewpoints."* (Article 6, paragraph 2) [9]

The inter-relationships between international trade policy, ecologically sustainable and socially just development, poverty eradication and environmental protection should be explicitly recognized and supported in the preamble of the MTO proposal. So, too, should the need to adopt a precautionary approach in all negotiations and decision-making.

In addition, these preambular recognitions should be matched by legally-binding commitments, in the main body of the text, ensuring that international trade regulation will not hinder the development of policies in these areas [10].

These commitments could be inserted as free-standing Articles. Alternatively, they could be included as additional paragraphs in Article III, which already contains a clause designed to promote greater coherence in global policy-making in the economic sphere.

There has been considerable debate about whether or not such commitments would extend the mandate of the MTO unacceptably by giving it a role in defining sustainable development. However, if the MTO proposal were to be amended as described above and included effective commitments to cooperate with international institutions already mandated to address sustainable development issues (see below), this should not present a problem.



The status of existing international environmental agreements that contain multilaterally agreed trade-related provisions, in relation to the "legally distinct" GATT 1993 (Article II.5), also needs to be acknowledged explicitly. The proposed North American Free Trade Agreement (NAFTA) already includes a specific clause acknowledging the priority of the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Finally, there should be a high-level Council (similar to the proposed Councils on Goods, Services and Trade-Related Aspects of Intellectual Property Rights), with a very clearly defined mandate, to deal with the practical consequences of the above amendments.

The activities of this Council should be informed by a panel of independent experts. This panel or body could be linked to the new UN Commission on Sustainable Development (in the same way that the International Trade Centre acts as a link between GATT and UNCTAD) in order to:

- provide expert advice on sustainable development issues, in particular on the environmental effects of the international trading regime; and
- act as a brake on the influence of industrial interests.

Again, the existence of such a Council need not extend the mandate of the MTO unnecessarily, given access to independent advice and effective cooperation with, and respect for, decisions taken in other international fora.

## THE MTO AND DEVELOPING COUNTRIES

All members, including developing countries, will be obliged to accept all the Multilateral Trade Agreements (in goods, services and intellectual property rights) as a condition of membership of the MTO. This means that they will have to make new commitments, in order to retain their existing GATT privileges. However, this 'single undertaking' requirement could possibly exist without the MTO - MTO negotiators themselves have expressed different opinions on this matter.

Furthermore, it also seems that all prospective Members, without exception, will be expected to submit schedules of sectoral tariff concessions with respect to market access and national treatment for trade in services (Article XI). Previously, developing countries have been permitted considerable leeway over the degree to which they were expected to cut their tariffs.

However, the MTO proposal makes no mention of any flexible treatment for developing countries in relation to the single undertaking or tariff concessions. Thus, the special and differential treatment so far accorded to developing countries would seem to be in jeopardy. As an MTO analysis for UNCTAD points out:

*"This would lead to a substantial increase in the scope of obligations for all contracting parties, but, in addition, developing countries will be faced with a dramatic increase in their level of obligations on subsidies, agriculture, and technical barriers to trade which had previously been accepted by a minority of developing countries...the MTO will substantially reduce the flexibility which developing countries have enjoyed in their trade and investment policies under the multilateral trading system."* [4] (emphasis added)

If all Members will be obliged to make such commitments and concessions, developing countries should be fully aware of this fact. On the other hand, if effective special and differential treatment is to be retained, this should be clearly stated in Article XI, which deals with membership criteria. In this particular case, membership of the MTO, it cannot be argued that special and differential treatment is dealt with adequately in other parts of the Draft Final Act.

Developing countries concessions may also be affected by the nature of the relationship and degree of cooperation established between the proposed MTO and other intergovernmental fora, particularly the United Nations and the Bretton Woods institutions (see below).

### THE MTO'S RELATIONSHIP WITH THE UNITED NATIONS

The International Monetary Fund (IMF), the World Bank and the provisional General Agreement (now referred to as "GATT 1947") share a common pedigree. They were all established as a result of the United Nations (UN) monetary and financial conference held in Bretton Woods in the United States in 1944.

However, the IMF and the World Bank, although effectively autonomous, are specialized agencies of the United Nations. As such, they have entered into legal relationships with the UN and report annually to the UN's Economic and Social Council (ECOSOC), which coordinates the UN's economic and social work.

In complete contrast, however, the proposal to establish an MTO, which will administer a "legally distinct" "GATT 1993" (Article II.5), does not define any relationship with the UN. Although the United Nations is mentioned twice [11], the references are passing ones and do not establish any formal relationship between the two institutions.

Article VIII.4, which deals with the status of the MTO, mentions the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

However, multiple square brackets and deletions reveal that there have obviously been considerable differences of opinion over whether:

■ "Members shall take into account the provisions concerning privileges and immunities stipulated in the Convention"; [2] (emphasis added) or

■ "The privileges and immunities...shall be similar to the provisions concerning privileges and immunities stipulated in the Convention" [2] (emphasis added).

Significantly, a previous proposal that the "privileges and immunities...shall be based on" [2] (emphasis added) those provisions have been deleted. Curiously, neither draft states that the MTO should actually be a specialised agency of the UN.

Another article (Article III.1) indicates that there is also disagreement as to whether the MTO shall be the sole forum, or merely "a" forum, in which multilateral trade is discussed. From this one can only conclude that the future role of UNCTAD and other fora dealing with international trade is at stake.

Finally, one Contracting Party has informally stated that:

*"Establishing an MTO within the existing GATT system will enhance the status of the GATT by giving it legal personality to deal with other organizations while, at the same time, preventing the emergence of a trade organization within the UN system."* [12] (emphasis added)

This would seem to be a correct statement of the facts, since the 'GATT 1947' which will be annexed to the MTO proposal will no longer contain Article XXXIX which contains "a legal argument to re-initiate the work towards establishment of a comprehensive International Trade Organization (ITO)" [4]

Overall, it would seem that any formal relationship with the United Nations is being hotly contested by one or more Contracting Parties. This is highly significant and needs to be noted by those Contracting Parties, particularly developing countries CPs, who believe that the MTO will work to protect their interests.

## COOPERATION WITH THE UNITED NATIONS AND THE BRETTON WOODS INSTITUTIONS

Currently, the only Article in the proposal dealing with inter-institutional cooperation is extremely weak. It simply states that:

*"The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the MTO" [2].*

There is no definition of what "appropriate arrangements" might be and there are no guidelines indicating which intergovernmental organizations should be considered "relevant".

Compare this, for example, with the International Tropical Timber Agreement 1983, which states considerably more clearly that:

*"The Council shall make whatever arrangements are appropriate for consultation or co-operation with the United Nations and its organs, such as the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the United Nations Development Programme (UNDP) and the International Trade Centre UNCTAD/GATT (ITC), and with the Food and Agriculture Organization of the United Nations (FAO) and such other specialized agencies of the United Nations and intergovernmental, governmental and non-governmental organizations as may be appropriate." [13]*

A cooperative relationship between the MTO and the UN and its subsidiary bodies [14] must be firmly established. This would at least go some way to:

- achieving and ensuring greater coherence in global policy-making on trade and the environment (as recommended in Agenda 21 - see above); and
- reaffirming the need for collaboration between the Members and the UN with respect to activities which relate to the trade and economic development of less-developed countries (as expressed in Part IV of the General Agreement).

Arguments to the effect that national governments alone are responsible for ensuring the consistency of commitments they make in different international fora are absurd. If this is the case why does the MTO proposal single out the World Bank and the International Monetary Fund as fora to cooperate with?

Indeed, the fact that the MTO proposal fails to define any kind of relationship with the UN contrasts with and adds significance to its clear reference to the two Bretton Woods organisations:

*"With a view to achieving greater coherence in global economic policy-making, the MTO shall cooperate, as appropriate, with the International Monetary Fund and the International Bank for Reconstruction and Development [the World Bank]" [2].*

The significance of this statement becomes even more disturbing in view of the existing relationship between GATT and the International Monetary Fund in matters relating to balance-of-payments. Although there is a clear requirement for cooperation between the two institutions:

*"Legal opinion is that, in the final analysis, the GATT is sovereign in these matters". [15]*

The new emphasis on cooperation between the Bretton Woods institutions and the MTO could be interpreted as a first step to altering this delicate balance of power [15], particularly since there is no definition of, or restriction on, the type or level of cooperation anticipated.

This prospect gives cause for concern, since both the World Bank and the IMF have:

- a weighted voting structure rather than GATT's more democratic one-country one-vote system;
- already been severely criticized for their handling of environment and development issues; and
- frequently insist upon unilateral trade liberalisation when lending to developing countries in spite of the fact that this:



- reduces the bargaining power that liberalised economies can wield in future GATT negotiations [15]; and

- goes against the spirit of GATT's special and differential treatment of developing countries [15] indicating that the priorities of the different institutions could come into conflict in the future.

It is essential to clarify the precise relationship between the MTO and the two Bretton Woods institutions. This clarification could usefully develop and strengthen a point hidden away in the Decision on the Functioning of the GATT System:

*"GATT should...pursue and develop its cooperation with the international organizations responsible for monetary and financial matters, while...avoiding the imposition on governments of cross-conditionality or additional conditions" [1]*

This could help to ensure that the Bretton Woods institutions do not make loans to developing countries conditional upon their adherence to or implementation of their MTO commitments.

#### INDEPENDENT ARBITRATION AND ADVICE

As well as failing to define the nature of the MTO's relationships with other intergovernmental institutions (see above), the present proposal also omits any mechanism for seeking advisory opinions or judicial decisions from independent tribunals, such as the International Court of Justice (as suggested in the original Havana Charter).

This is likely to be of critical importance in areas where GATT rules and other binding and non-binding international agreements come into conflict, particularly if only one of the disputing parties is a signatory to the alternative agreement. It seems to be commonly taken for granted that in these circumstances a GATT dispute panel should resolve such a dispute.

This would be wholly inappropriate. GATT panels are required to make decisions on the basis of GATT rules only. To take this course of action

would be to give absolute precedence to an Agreement whose rules take no account of environmentally sustainable development (and at least one GATT dispute panel has already commented on the possible need to amend GATT rules [16]).

This dilemma is not merely hypothetical. There has already been much talk about what might happen if a signatory to the Montreal Protocol on Substances that Deplete the Ozone Layer applied trade-related provisions to a non-signatory. Worse still, a GATT dispute panel has already ruled that the European Community's old banana import regime (pre-July 1993) unfairly restricted Latin American imports and was not compatible with GATT obligations [17]. A second dispute panel will now consider the EC's new banana import regulations. The implication of these developments is that GATT could take precedence over agreements such as the Lomé IV Convention.

Disputes such as these, that involve agreements made outside GATT, must be taken to an independent tribunal whose members have the expertise to make informed and impartial judgements.

#### TRANSPARENCY AND ACCOUNTABILITY

The GATT is renowned for its lack of transparency and both the Decision on the Functioning of the GATT System (FOGS) [1] and the MTO proposal gives good reason to believe that this lack of transparency will be carried over into the MTO. Indeed, the first paragraph of the Article, dealing with miscellaneous provisions, states that:

*"Except as otherwise provided for under this agreement or the Multilateral Trade Agreements, the MTO shall be guided by the decisions, procedures and customary practices followed by the Contracting Parties of the GATT 1947" (Article XVI.1) [2]*

Although membership of the various Councils and Committees is open to all Members, the proposal leaves these bodies to establish their own rules of procedure (Article IV). There is,

therefore, no way of predicting precisely how future negotiations will be conducted. In particular, there is:

- no guarantee that informal or sector-specific negotiations will now be open to all interested Members; and

- no guarantee that the MTO Secretariat and others instrumental in arranging negotiations and other meetings will provide all Members with comprehensive information in a timely manner [18].

If negotiators want to eliminate discriminatory treatment in international trade relations, as they say they do in the preamble to the text, an explicit commitment to increased internal transparency should be included in the MTO proposal.

Provisions regarding external transparency and accountability are no better. In addition to the failure to establish clearly defined relationships with other international institutions (see above), the MTO proposal does not give non-governmental organisations (NGOs) any right to observe or participate in proceedings. It merely states that:

*"The General Council may make appropriate arrangements for consultation with non-governmental organizations concerned with matters related to those of the MTO." (Article V.2))* (emphasis added) [2]

This clause is vague in the extreme. It fails:

- to clarify what "appropriate arrangements" might be;

- to define what "matters" are related to the MTO (on the basis of the present draft proposal, environmental NGOs would probably be excluded completely); and

- to ensure consultation and cooperation with NGOs.

The UN's ECOSOC, on the other hand:

*"recognizes that these organizations [NGOs] should have the opportunity to express their views and that they often possess special experience or*

*technical knowledge of value to the Council and its work....Non-governmental organizations which have been given consultative status may send observers to public meetings of the Council and its subsidiary bodies and may submit written statements relevant to the Council's work."* [19]

The MTO should increase its accountability by bringing its standards of cooperation with non-governmental organizations into line with those of other, more transparent, international institutions.

### FRIENDS OF THE EARTH INTERNATIONAL'S RECOMMENDATIONS

Any future international trade organisation must be a body that supports, rather than hinders, ecologically sustainable and socially just development.

Contracting Parties, and particularly developing country CPs, should not be put in a position where they feel compelled to accept an inadequate proposal to establish an influential international institution of unknown character, purely in order to gain a degree of protection from the unruly activities of the strongest trading nations, the United States, the European Community and Japan. Neither should they be expected to compromise their future negotiating ability on the basis of tit-for-tat bargaining with CPs who already hold, and no doubt wish to maintain, the whip-hand in international economic institutions.

It is essential that the MTO proposal is delinked from the Uruguay Round and considered separately. Annex IV in the Draft Final Act should be replaced with a commitment to consider, at length and in detail, the mandate and structure of an international trade organisation to be established at a later date.

In addition, external, independent observers should be party to any future debates concerning such an institution to help maximise the accountability of all participants.

Friends of the Earth International fully agrees with the conclusion reached in an informal analysis of the MTO proposal prepared for the United

#### Nations Conference on Trade and Development (UNCTAD):

*"It seems that an urgent and broad consideration of all relevant issues relating to the establishment of the MTO is needed, involving examination of past experience in this complex area, not necessarily in the context of the Uruguay Round. A decision to establish a new trade organization should not be taken in a hasty way, accommodating only short-term policy requirements."* (4) (emphasis added)

FoEI recommends that the MTO proposal, should it be used as the basis for further delinked negotiations on an international trade organisation, be amended as follows:

#### The MTO and Sustainable Development

- The inter-relationships between international trade policy, ecologically sustainable and socially just development, poverty eradication and environmental protection should be explicitly recognized in the preamble to the MTO proposal.
- The need to take a precautionary approach at all times should also be explicitly recognized in the preamble to the MTO proposal.
- These preambular recognitions should be matched by legally-binding commitments, in the main body of the text, ensuring that international trade policies will not hinder the development of policies aimed at eradicating poverty, protecting the environment and promoting ecologically sustainable and socially just development.
- Existing international environmental agreements containing multilaterally agreed trade-related provisions should be given explicit precedence over the "legally distinct" GATT 1993.
- There should be a high-level Council (similar to the proposed Councils on Goods, Services and Trade-Related Aspects of Intellectual Property Rights), with a very

clearly defined mandate, to deal with the practical consequences of the above amendments.

- The activities of this Council should be informed by a panel of independent experts. This panel or body could be linked to the new UN Commission on Sustainable Development (in the same way that the International Trade Centre links GATT and UNCTAD) in order to:

- provide expert advice on sustainable development issues, in particular on the environmental affects of the international trading regime; and
- act as a brake on the influence of industrial interests.

#### Transparency and Accountability

- There should be a mechanism permitting recourse to an external legal body, such as the International Court of Justice, when independent decisions or advisory opinions are required.
- An explicit commitment to increased internal transparency should be included in the MTO proposal, particularly with respect to the timely distribution of all discussion and other papers to all Members.
- There should also be a parallel commitment to external transparency, informing and consulting NGOs and people affected by trade measures.
- The accountability of the MTO should be increased by ensuring that non-governmental organizations have a right to monitor negotiations.
- There should be a transparent and informed discussion about proposed decision-making procedures, both internally and externally.



## The MTO's Status and Structure

■ The MTO's legal status should be clarified.

■ The MTO proposal should state whether or not it is a specialised agency of the UN. If it is not, a clear statement of the relationship between the MTO and the UN should be incorporated into the text.

■ Clarification of the precise nature of the relationship between the MTO and the Bretton Woods institutions is essential. Such clarification should develop and strengthen a point hidden away in the FOGS Decision:

*"GATT should...pursue and develop its cooperation with the international organizations responsible for monetary and financial matters while ... avoiding the imposition on governments of cross-conditionality or additional conditions"*  
[1] (emphasis added)

Several amendments have already been informally proposed by Contracting Parties. However, none of the suggestions made so far fully incorporate the recommendations given in this paper.

Brief details of each governmental proposal are given in Annex I.

### ANNEX I: GOVERNMENTAL PROPOSALS TO AMEND THE MTO

#### The United States and 'GATT II' [20]

The United States is opposed to the MTO proposal because it fears that a new and powerful institution could curb its ability to act unilaterally.

The US has therefore put forward an alternative, non-institutional proposal, known as 'GATT II'. Like the MTO proposal, the US alternative still has a 'best endeavour' clause, which states that:

*"Ministers shall endeavour to take all necessary steps, where changes to domestic laws will be required to implement the provisions of the Multilateral Trade Agreements and ...to ensure the*

*conformity of their laws with those Agreements."*  
[20]

In theory this means that the United States would be expected to rescind legislation such as the renowned 'Super 301' law (a law which effectively mandates the US to take unilateral action against trading partners when complaints are received from domestic industrial concerns).

However, because the US proposal appears to set up a non-institutional mechanism for implementing the results of the Uruguay Round, there would be less actual pressure on the US to alter its legislation. Furthermore, the US could itself use the 'best endeavour' clause, backed up by its own trading strength, to insist that other countries change their laws.

In addition, the US proposal does not remove the single undertaking requirement or the cross-retaliation clause contained in the Understanding on Rules and Procedures Governing the Settlement of Disputes [1]. (Cross-retaliation means that in the event of a dispute, the damaged party can retaliate in another sector to the one in which the dispute occurred. This means, for example, that a dispute over access to a commodity-dependent country's investments market could result in retaliation against its exports.)

Without a trading organisation the strongest trading nations would benefit from these remaining cross-sectoral links, since weaker economies are unlikely to be able to make use of these clauses without institutional support.

In addition, the US proposal contains a special clause securing the 'grandfather rights' permitted under the current Protocol of Provisional Application. In other words, the existing situation whereby certain GATT-inconsistent national legislation has been permitted for historical reasons, would be maintained.

Finally, the US 'Decision' does contain a reasonably strong preambular statement on the environment:

*"Desiring to undertake each of the preceding in a manner consistent with environmental protection and conservation and that their trade policy and trade*

*liberalization endeavours contribute to the promotion of sustainable development."*

## The European Community

Since the European Community, and other countries such as Canada and Mexico, are particularly anxious to establish the MTO (to protect themselves from the unilateral actions of other countries), they seem to be prepared to consider amendments to the existing proposal, in order to ensure that it stays in the Draft Final Act.

Thus, the EC's Council of Ministers has already responded to criticism from non-governmental organisations by formally expressing its support for a number of amendments. A Council Resolution on Environmental Protection and International Trade states that:

*"Without postponing a successful conclusion of the Round, the Community should, in collaboration with its partners, support:*

- *a declaration by the Contracting Parties stating that they will urgently intensify their discussion on the relationship between environmental measures, sustainable development and international trade; the aim of this discussion should be that consensus is reached as soon as possible on a comprehensive package for taking account of relevant environmental concerns by the multilateral trading system;*

- *inserting a paragraph in the preamble of the agreement on establishing the Multilateral Trade Organisation expressing that the objectives of sustainable development and environmental protection should be given adequate consideration in the work of that organisation; [and]*

- *considering the establishment within the Multilateral Trade Organisation of an International Trade and Environment Committee, which could continue, intensify and if necessary broaden the work of the present GATT Working Group on Environmental Measures and International Trade."*[21]

## The "Friends of the MTO"

The European Commission, Brazil, Mexico, India, Thailand, Sweden and Canada have also established an informal group called "*Friends of the MTO*". This coalition has produced an alternative MTO proposal [22], but it does not effectively address any of FoET's concerns.

The 'Friends of the MTO' proposal:

- contains a very weak preambular reference to environmental protection, and none at all to sustainable development:

*"...developing the optimal use of the resources of the world at sustainable levels with due respect for the environment..."*;

- appears to increase the status of the MTO by allowing it to facilitate the implementation, as well as the administration and operation of the Agreement and Multilateral Trade Agreements (Article III.1);

- threatens to undermine the role of other international institutions, such as UNCTAD, by declaring that the MTO shall be "*the*", rather than "*a*", forum for negotiations among members concerning their multilateral trade negotiations (Article III.2);

- reverts to the original statement that the privileges and immunities to be accorded by a member shall be based on the relevant provisions in the Convention on the Privileges and Immunities of the Specialized Agencies (Article VIII.4) of the UN;

- requires all members to submit "*Schedules of Concessions and Commitments*";

- gives priority to the provisions of the MTO proposal if they are found to conflict with provisions in the Multilateral Trade Organizations, meaning that negotiated agreements could be subject to unnegotiated alterations in the future (Article XVI.3); and

- changes the language of what is known as the 'best endeavour' clause, removing the explicit reference to changing domestic laws.

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- [10] "It is always significant in international legal practice when exhortation in a preamble are not reflected in the substantive provisions in the body of the text."
- "Structural Changes in the Uruguay Round - the Multilateral Trade Organization and Integrated Dispute Settlement", James Cameron and Halina Ward, Foundation for International Environmental Law and Development (FIELD), 1993
- [11] The United Nations is mentioned once in Article IV, with respect to the MTO's status, and once in Article XVI, which deals with miscellaneous provisions. This second reference requires that the agreement is registered with the UN, a standard procedure which does not confer specialized agency status.
- [12] "MTO: Reasons why we need an "organization", and why the USA proposal to replace MTO with a Ministerial Decision and a Protocol is not adequate", 14 December 1992, attached to United States proposal for a Ministerial Decision and Protocol, Contracting Party unspecified.
- [13] Cited in "Preparation of a Successor Agreement to the International Tropical Timber Agreement, 1983: Note by the UNCTAD Secretariat", UNCTAD, 26 February 1993.
- [14] These could include, *inter alia*, the United Nations Conference on Trade and Development (UNCTAD); the proposed Commission on Sustainable Development (UNCSD); the World Health Organisation (WHO) and the World Intellectual Property Organisation (WIPO).
- [15] "The MTO and Relations with the International Monetary Fund and the World Bank", Humberto Campodonico, Centro de Estudios y Promocion del Desarrollo, Peru, November 1992.
- [16] "The [tuna-dolphin] Panel's task was limited to examination of this matter in the light of existing GATT obligations....If the GATT contracting parties wished to permit environmental trade restrictions such as those under the United States dolphin protection law, they would need to agree on limits to prevent abuse. Since Article XX does not provide such limits, the Panel stated that it would be better to amend or supplement the provisions of the General Agreement or to provide a waiver, since each of these alternatives would provide an opportunity for the contracting parties to develop and negotiate provisions to minimize the risk of excessive use and abuse." (emphasis added)
- "Trade and the Environment, International Trade 90-91", General Agreement on Tariffs and Trade, Geneva, February 1992.



- [17] "*Caribbean Banana Producers Attack GATT Challenge*", Financial Times, 3 June 1993
- [18] "*The Democratic Deficit in the Uruguay Round Negotiations*", Myriam Vander Stichele, European Ecumenical Organisation for Development (EECOD), 1992
- [19] "*Basic Facts About the United Nations*", United Nations, New York, 1987
- [20] "*Decision*" and "*Uruguay Round Protocol*", Paper to GATT Council from United States, 14 December 1992
- [21] Draft Council Resolution on Environmental Protection and International Trade, The Council of the European Communities, 64116/93, May 1993.
- [22] "*Draft Agreement Establishing the Multilateral Trade Organisation: 'Friends'*" Text (May 27, 1993)

**TOPICS COVERED IN  
THIS BRIEFING**

The MTO's Legal Status and Sovereignty

The MTO and Sustainable Development

The MTO and Developing Countries

The MTO's Relationship with the United Nations

Co-operation with the United Nations  
and the Bretton Woods Institutions

Independent Arbitration and Advice

Transparency and Accountability

Friends of the Earth's Recommendations

Annex I - Governmental Proposals to Amend the  
MTO

The United States and "GATT II"

The European Community

The "Friends of the MTO"

July 1993

Friends of the Earth  
26-28 Underwood Street  
London N1 7JQ

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December 3, 1993

Ambassador Mickey Kantor  
U.S. Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20506

Dear Ambassador Kantor:

As you are aware from the letter sent by a number of environmental organizations dated December 1, 1993 and the letter from the National Wildlife Federation dated November 23, 1993, the environmental community is deeply concerned about the standards provisions and the complete inattention to environmental issues in the "Draft Final Act" of the Uruguay Round. This letter sets forth in detail several of the concerns that the World Wildlife Fund, Environmental Defense Fund, Natural Resources Defense Council, Defenders of Wildlife and National Audubon Society have with the Draft Final Act.

Our concerns arise from the Draft Final Act's violation of four important principles that we believe must be incorporated in any trade agreement. First, while it is appropriate for trade agreements to impose disciplines on disguised trade restrictions, they should not permit successful challenges to environmental laws and health-based sanitary and phytosanitary measures that are adopted for the purpose of protecting the environment or human health or safety (provided, of course, that the laws are applied even-handedly to imported and domestic products.) For the reasons set forth below, we believe that the Draft Final Act does not meet this principle: it will allow general attacks on legitimate U.S. environmental and health-based laws that were not passed with the purpose of giving U.S. industries a competitive advantage. We believe that virtually the entire environmental community would have to oppose actively any trade agreement that allows such challenges.

Second, we believe that a trade agreement cannot encourage downward harmonization of environmental and health-based standards and technical regulations. Again, for the reasons set forth below, the Draft Final Act fails this test: it incorporates language that the Administration found insufficient in the NAFTA and that we believe creates a real danger of downward harmonization. We believe that the environmental community would also have to oppose actively any trade agreement that encourages such a result.

Third, trade agreements, particularly those provisions dealing with interpretation, decision-making and dispute resolution, should recognize transparency and public participation as important goals. We know that the U.S. has



sought such transparency in the Draft Final Act, but the text continues to set forth very closed procedures in the dispute resolution process.

Fourth, as NAFTA recognizes, a trade agreement must not ignore the impact of trade on the environment, and the rules and institutions governing international trade must be made responsive to the needs of legitimate environmental imperatives. The Draft Final Act fails to correct fundamental deficiencies in the GATT in this regard. While we recognize that only incremental adjustments are possible at this stage of the Round, we think steps can be must be taken to ensure that the international community is committed to addressing these issues in a structured and meaningful fashion. In particular, the proposed MTO should not be accepted in its present form, and discussion of its charter should be linked to environmental issues in negotiations immediately following the close of the current Round.

In the remainder of this letter we address the standards and harmonization issues in the context of the sanitary and phytosanitary (S&P) and the technical barriers to trade (TBT) provisions and then turn to the affirmative steps we believe can and should be taken to address the impact of the agreement on the environment.

#### I. Sanitary and Phytosanitary Measures

The Draft Final Act's proposals on S&P measures do not provide the protection for domestic S&P provisions that your office found necessary in the NAFTA. We recognize that U.S. negotiators, in December 1992 and again more recently, have offered draft proposals on the GATT standards chapters; although these proposals represent movement in the right direction, they fall well short of the provisions we believe are necessary to prevent challenges to legitimate health-based S&P standards that were not intended as barriers to trade and that reflect the health based concerns of the communities in which they were passed.

##### A. "Scientific Justification" and "Risk"

The draft (p. L.37, paragraph 11) would permit GATT parties to exceed international S&P standards only upon demonstrating that "there is scientific justification" for such stricter measures. Related language (p. L.36, paragraph 6) would obligate parties to ensure that their S&P measures are not "maintained against available scientific evidence."

As you are aware, this is the type of language that the Administration found inadequate in the NAFTA context. It fails

to recognize that risk levels, the starting point in setting health-based standards, cannot be determined scientifically and reflect the judgment of the community involved. It also fails to recognize that even S&P measures that are indisputably designed for health-based reasons must often be based on uncertain scientific evidence that is subject to attack on strict scientific grounds even when it is the best available evidence.

Compared to the Draft Final Act, the NAFTA provisions governing S&P measures are much more protective of federal, state and local standards that exceed international norms. They explicitly permit, for example, a community to choose its own level of risk.

Moreover, Chapter 7 of the NAFTA clearly provides that NAFTA panels are not free to substitute their own judgment for that of domestic authorities on the adequacy of the science underlying S&P measures. The Statement of Administrative Action notes specifically that:

The question is also not whether the measure was based on the "best" science or the "preponderance" of science or whether there was conflicting science. The question is only whether the government maintaining the measure has a scientific basis for it. This is because [the NAFTA S&P measures text] is based on a recognition that there is seldom, if ever, scientific certainty and consequently any scientific determination may require a judgment among differing scientific opinions. The NAFTA preserves the ability of governments to continue to make those judgments. (NAFTA Statement of Administrative Action, p. 93).

This understanding should be explicitly included in any S&P provisions agreed to by the GATT parties. The GATT agreement should also incorporate the language from Article 723 of NAFTA, which confirms "that a Party asserting that a sanitary or phytosanitary measure of another Party is inconsistent with [the NAFTA S&P section] shall have the burden of establishing the inconsistency." In addition, the agreement should make it clear that food safety decisions are not subject to full reconsideration under GATT, but can be challenged only as lacking a rational basis or as "arbitrary and capricious" resulting from an unfair or unreasonable decision making process.

#### B. "Least restrictive to trade"

The Draft Final Act (p. L.39, paragraph 21) would require that S&P measures exceeding international standards must be "the least restrictive to trade, taking into account technical and economic feasibility." In contrast, Chapter 7 of NAFTA omits this provision.

The "least restrictive to trade" test is objectionable and should be removed from any final Uruguay Round agreement. The draft language would enable GATT dispute panels to render highly subjective determinations of whether particular food safety measures create a minimum of trade disruption in achieving their defined objectives. Conceivably, for example, regulatory restrictions on toxic chemicals could be challenged on grounds that warning labels would accomplish the same level of human health protection. Moreover, there is much literature, some of it emanating from the GATT itself, that market-based incentives are always less trade restrictive than regulatory schemes. A wide range of U.S. health and environmental laws utilize regulatory approaches and could be subject to challenge under the "least restrictive to trade" test.

The Uruguay Round text should additionally specify that the term "necessary," as employed in paragraphs 5 and 6 of the draft S&P agreement, means "reasonably required." This would avoid any interpretation that the selection or application of an S&P measure must constitute the least trade restrictive approach.

With respect to the definition of "necessary", we are proposing that a party challenging a measure under GATT would have to prove the lack of any reasonable nexus between the measure and the accomplishment of its specific health protection objective. A measure could not be viewed in violation of GATT just because there is theoretically an equally effective, but less trade restrictive, alternative. This would conform the GATT provisions to the understanding of the NAFTA countries regarding the meaning of "necessary" in the S&P context. (NAFTA Statement of Administrative Action, pp. 94-95).

#### C. Risk Assessment

The Draft Final Act would mandate that S&P measures be based on risk assessment. Of particular concern, the draft (p. L.38, paragraph 18) appears to require that economic considerations be factored into determinations of individual countries' appropriate levels of protection. This runs directly counter to some regulatory requirements in the United States, notably the "zero risk" policies embodied in the Delaney Clauses, that specifically forgo quantitative risk assessment.

Here, changes are needed in two respects. First, the Uruguay Round text should make clear that quantitative risk assessment is not required where human health is at issue -- both in the establishment of appropriate levels of protection and the choice of S&P measures to achieve those levels. The NAFTA text (Articles 712.2, 715) is essentially unambiguous on this point; the Draft Final Act is not.



Second, GATT should recognize that, while administrative agencies most often make "risk assessments," legislatures, courts and electorates have both legal rights and important roles to play in the process. We recommend the following language to provide this clarification in the Uruguay Round text:

The Parties recognize that the adoption, maintenance, and application of sanitary and phytosanitary measures may involve actions by regulatory agencies, legislatures, courts, electoral referenda, and private standard-setting bodies at both the national and subnational levels. The Parties further recognize that these actions may take place in circumstances where risk assessments, as required by [the S&P section], may not be appropriate or feasible.

#### D. "Harmonization"

To encourage "harmonization" of standards, the Draft Final Act (p. L.37, paragraph 9) would require that parties generally "base their sanitary or phytosanitary measures on international standards, guidelines or recommendations." Under the terms of the draft (p. L.37, paragraph 10), standards set by international institutions such as the Codex Alimentarius Commission would be presumptively consistent with GATT.

Unfortunately, the Uruguay Round draft text provides no check against standards harmonization toward the international lowest common denominator. In contrast, Articles 713 and 714 of NAFTA explicitly require that the pursuit of equivalent standards internationally shall occur "without reducing the level of protection of human, animal or plant life or health." Similar language should be incorporated in GATT.

Moreover, Article 713.2 of NAFTA provides that any deviation from international standards "shall not for that reason alone be presumed to be inconsistent" with NAFTA's S&P rules. The Uruguay Round agreement should also contain this provision.

## II. Technical Barriers to Trade

As with the S&P measures, we fear that the draft TBT provisions would permit challenges to valid environmental standards and regulations that indisputably were not intended to create barriers to trade. And as with the S&P provisions, the TBT provisions use language that your office found inadequate in the NAFTA to protect legitimate U.S. environmental standards and technical regulations. To correct this problem, several TBT provisions must be addressed.

### A. Least Trade-Restrictive and "Necessary"

The Draft Final Act (p. G.2, paragraph 2.2) would provide that technical regulations "shall not be more trade-restrictive than necessary to fulfill a legitimate objective." For the reasons described above, it may be very difficult for many U.S. environmental regulations to meet this standard even when the regulations clearly fulfill a legitimate purpose.

The approach the Administration took to this issue on the NAFTA was very different. The NAFTA does not use the phrase "shall not be more restrictive than necessary" (nor does the current GATT standards code), stating instead that regulations cannot create an unnecessary obstacle to trade. Moreover under Chapter 9 of the NAFTA, it is a complete defense if the purpose of the measure is to achieve a legitimate objective. We believe that the NAFTA language comports with the goal of identifying disguised barriers to trade and not permitting challenges to legitimate environmental regulations. It is critical that this approach be followed in the Final Agreement.

### B. Harmonization

The Draft Final Act (p. G.3, paragraph 2.4) provides that parties shall use international standards as a basis for their technical regulations except when such use would be an "ineffective or inappropriate means of fulfillment of the legitimate objective pursued, for instance because of fundamental climatic or geographic factors or fundamental technological problems." This language represents a serious regression from the current GATT language, which lists not only the two exceptions contained in the Draft Final Act, but also lists as reasons not to use international standards "protection of human health or safety, animal or plant life or health, or the environment."

Moreover, the language in the Draft Final Act was considered inadequate in Chapter 9 of NAFTA, where the words "or the level of protection that the party considers appropriate" were added as an exception to the use of international standards, and for even greater certainty a new section was added stating that "This provision shall not be construed to prevent a party, in pursuing its legitimate objective from adopting, maintaining, or applying any standards-related measure that results in a higher level of protection than would be achieved if such measure were based on an international standard." If such language is not included in the Final Act, GATT could lead to unacceptable pressure for downward harmonization of standards.

### III. Transparency and Public Participation

At present, members of Congress, state and local government officials, non-governmental organizations and citizens have only limited ability to learn about and participate in proceedings under the GATT. The closed procedures for resolving disputes and taking other important decisions are unacceptable in a forum whose decisions may affect public health, natural resources and environmental quality.

It is critical that the Uruguay Round agreement take steps to expand public participation and transparency in GATT decision-making, interpretation, and dispute settlement procedures. At a minimum, the agreement should specifically require that all dispute submissions and reports be made publicly available, that dispute panels seek environmental expertise in cases where environmental laws are challenged, that panel hearings be open to the public, and that citizens and non-governmental organizations have opportunities to submit briefs to ensure their views are represented in dispute proceedings. In addition, we strongly urge USTR to continue the practice of providing notice and comment in the Federal Register on trade disputes involving U.S. laws.

We are aware that the U.S. has proposed measures to open GATT dispute settlement procedures. We also understand that partial concessions to the U.S. proposals may be reflected in the most recent drafts prepared by the Uruguay Round negotiating group on dispute settlement. We urge you to continue to press for much stronger transparency measures in the dispute settlement negotiations.

### IV. Integration of Trade in the Environment

The liberalization of markets must proceed hand in hand with responsible environmental policies. As the Administration recognized in negotiating the landmark NAFTA agreement, the impact of trade on the environment must be considered in any trade agreement, and -- more fundamentally -- the rules and institutions governing international trade must be made responsive to environmental imperatives if market liberalization is to contribute to sustainable international commerce and development. Unfortunately, the GATT has proved insensitive and sometimes hostile to this view. The Draft Final Act completely ignores the need to begin a process of serious reform at the GATT to integrate trade and environmental policies. Indeed, by proposing an MTO that does not incorporate this integration into its mission and operations, the Draft Final Act represents a significant and unacceptable step backwards.

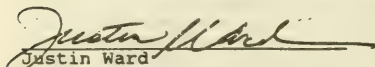
The creation of the MTO should be deferred until after the conclusion of the current Round. Discussion of environmental issues in conjunction with the charter of the MTO offers the best

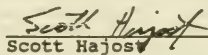


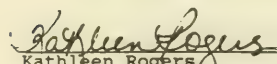
means of moving GATT towards integrating environmental concerns into its mission and operations. Certainly, an MTO that lacked an environmental committee with a clear work program for environmental reform would likely provoke strong opposition of the environmental community. In any event, the U.S. should insist that the parties to the Round make unambiguous commitments to continue discussions of environmental issues in a meaningful and expedited fashion after the Round concludes.

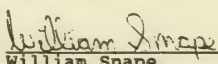
Thank you for considering our views at this critical stage of the process. We would be happy to respond to any questions you or your staff may have on this letter.

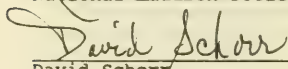
Sincerely,

  
Justin Ward  
Senior Policy Specialist  
Natural Resource Defense Council

  
Scott Hajos  
International Counsel  
Environmental Defense Fund

  
Kathleen Rogers  
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Trade and Environment  
World Wildlife Fund

# The Seattle Times

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## EDITORIALS

### NAFTA should get full environmental review

FEDERAL District Court Judge Charles Richey recently ruled the government is required under existing law to issue an environmental impact statement for the North American Free Trade Agreement (NAFTA).

President Clinton would be wise to produce the impact statement rather than prolong the court fight. The ruling actually does not prevent him from submitting NAFTA to Congress or prevent Congress from approving it before the environmental impacts are analyzed. The requirement serves a purely informational function (if Congress acts earlier, the issue becomes moot).

Yet NAFTA supporters worry that any pressure to do a full-blown environmental review at this late date would give NAFTA opponents an excuse to kill the agreement by delay. Their anxiety is understandable: Congress is deeply divided over NAFTA's impact on domestic jobs and on the environment along the U.S.-Mexico border. Judge Richey's decision didn't create NAFTA's political problems. Congress and the public are demanding answers anyway.

The National Environmental Policy Act (NEPA) requires federal agencies to prepare an impact statement on every proposal for legislation or major action significantly affecting the quality of the human environment.

There is no denying that NAFTA will have substantial environmental effects. The Bush administration, which negotiated the agreement, acknowledged that fact and did a partial analysis. The Clinton administration, by trying to negotiate a side agreement with Mexico on some environmental issues, clearly recognizes that impacts exist. But even a successful side agreement is not an adequate substitute for a systematic review of all impacts.

Environmentalists warn NAFTA would create pollution havens as U.S. companies move across the border to escape stringent U.S. pollution regulations. Others say NAFTA might allow Mexico to challenge U.S. health and environmental laws as unfair restraints of trade. Could U.S. bans on the use of certain chemicals, pesticide standards for food, and embargoes on seafood imports based on fishing methods become subject to trade sanctions? An environmental impact statement would answer these questions.

Free trade will benefit both the U.S. and Mexican economies in the long run. The question is whether specific aspects of NAFTA are compatible with national environmental goals.

Given the high stakes involved, Clinton can't afford to waste time pursuing regulatory short-cuts (the administration is seeking an expedited appeal of Judge Richey's decision). Instead, he should move quickly to prepare a comprehensive environmental analysis that gives Congress the information it needs.



DON WILLIAMSON / Times editor

### Exercises in the city's des



LIFE is hard and short. So you have to begrudge people a little excess. It's only human to sometimes buy things you can't afford or binge a bit here and there.

If you've worked hard all year, it only seems right to reward yourself with a little.

hauble. If someone does a good job for you showing your appreciation by buying them something special isn't such a bad thing.

Take retired Chrysler chairman and chief executive officer Lee Iacocca. Last year received \$14.6 million in compensation, an additional \$5.76 million from exercise stock options.

Even though he's not running Chrysler longer, he'll get \$1 million and the use of a company plane over the next two years, another \$700,000 a year in pension and supplemental pension benefits.

Iacocca's replacement, Robert Eaton, will make \$2.7 million this year. The company's chief financial officer will get \$1.5 million, the chief administrative officer will get \$1 million.

That seems a little excessive. But Chrysler is a public corporation in a free-enterprise system and can do what it wants to with money. The same is true for the other Paramount Pictures who were so happy in the work done on current box office hit "The Firm," they went present-shipping.

What Paramount came up with was a



## NATIONAL WILDLIFE FEDERATION NEWS

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For Immediate release:  
December 15, 1993

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### NWF Opposes World Trade Pact

Washington, D.C. -- The National Wildlife Federation today announced opposition to current Uruguay Round provisions of the General Agreement on Tariffs and Trade, and will recommend Congress reject the agreement unless it is amended to guarantee environmental reforms.

The Uruguay Round talks, taking place in Geneva, Switzerland, are scheduled to be complete December 15.

"GATT is not ready for the 21st Century, based on the results to date of the Uruguay Round talks," said Jay D. Hair, NWF president. "Instead of retooling for today's challenges, the negotiators have held onto yesterday's obsolete approaches. All global trading partners must recognize a central lesson from the North American Free Trade Agreement (NAFTA) -- support for international trade accords can occur only when important environmental concerns are included."

The Uruguay Round's failure to produce an agenda for environmental reform of GATT and the international trading system is the greatest disappointment, even though the negotiations did result in some improvements. "While the need for reform seems to be accepted by GATT participants, the current negotiations failed to produce an agenda, a timetable and an institutional mechanism, such as an environmental committee. These elements are absolutely essential for reform to occur," said Rodrigo Prudencio, NWF trade and environment specialist observing the talks in Geneva.

The Federation credited U.S. negotiators and other GATT parties for some positive modifications in the area of food safety and environmental standards in general. The negotiations would allow countries for the first time to consult environmental experts during environmental disputes. In addition, summaries of arguments made before dispute panels will now be made public.

These significant changes reflect progress made in dealing with environment as part of the NAFTA, which the Federation ultimately endorsed. However, some language crafted during the Uruguay Round talks appears troublesome. Further study is required to determine if provisions calling for a "least trade restrictive" test under GATT could endanger domestic environmental laws.

Following the Uruguay Round, negotiations will continue on the GATT Ministerial Declaration, scheduled to be issued in April. These negotiations could offer an opportunity to correct problems in the present agreement. "If necessary changes are not made, GATT ratification by Congress could face more unified opposition and be even more difficult than NAFTA," said Stewart Hudson, of NWF. "GATT nations must improve their understanding of the politics of trade in the United States and the urgent need to integrate environmental concerns into trade agreements on a global basis."

NWF is the largest grassroots-based conservation education organization in the U.S.A. Founded in 1936, NWF works to educate and assist individuals and organizations to conserve natural resources, and to protect the Earth's environment.





## STANDARDS DOWN, PROFITS UP!

This fact sheet explores the issue of whether or not firms relocate in Mexico to escape the costs of U.S. environmental regulation. While acknowledging that such costs are in many cases not as important as the difference in labor costs in a firm's decision to relocate, it appears that once in Mexico (or any other country with either lax environmental standards or lax enforcement) there is a powerful financial incentive to boost profits by not abiding by environmental laws since the cost savings make a huge difference in profits when profit margins are thin. A rough estimation of the gains for some highly regulated industries indicates profits may double.

### A) The Concern

The environmental community is concerned that U.S. firms may relocate in Mexico to avoid the stronger pollution control standards and environmental enforcement that exist in the U.S. Firms that relocate are able to minimize pollution abatement costs and can increase profit margins substantially.

There is little doubt that the differences in environmental standards, particularly the enforcement of standards, can be a significant economic factor in a firm's decision to relocate in Mexico. An April, 1991 GAO Report revealed the findings of a survey of wood manufacturers who had relocated from the Los Angeles area to Mexico. Seventy-eight percent of those firms that moved cited stringent pollution control standards as "a major factor in their decision to relocate."¹

### B) The Bush Administration's Reply

The Bush Administration repeatedly denied that the costs of complying with U.S. standards are a reason for firms to relocate. Carla Hills, the former U.S. Trade Representative, argued that the compliance costs of environmental laws averages only around two percent for most U.S. industries. Since the costs are small, there is no inducement to move to Mexico. Her argument is based largely on data published in the February 25, 1992 "Review of U.S.-Mexico Environmental Issues."² The argument has been made that currency fluctuations can even be greater than 2%, thus rendering abatement expenditures insignificant.

The Bush Administration also maintained that Mexican environmental laws are tough and that enforcement is "improving dramatically." And, according to the trickle-down theory, economic growth in the country will necessarily lead to improved pollution abatement efforts.

¹ "Some U.S. Wood Furniture Firms Relocate From Los Angeles Area to Mexico," April 1991, U.S. GAO.

² Review of U.S.-Mexico Environmental Issues, February 1992, see p.164-171

### C) The Reality in Mexico

There is overwhelming evidence that foreign firms currently operating in Mexico are guilty of violating Mexico's standards and that these standards are not strictly enforced. According to both SEDESOL (the Mexican environmental agency) and EPA officials, Mexico's environmental program lacks sufficient funds and the adequate staff to ensure that firms comply with Mexico's 1988 national environmental law, the General Law.³

This has led to numerous violations by the Maquiladoras;

- An August, 1992 GAO Report disclosed that none of six new majority owned Maquiladoras studied had undertaken Environmental Impact Assessments, as prescribed by the General Law.⁴
- Over two thirds of the Maquiladora firms have not returned hazardous waste to the U.S., as is required by law, and many foreign firms that produce hazardous waste have failed to register accordingly.⁵
- Independent testing outside Maquiladora firms has revealed toxic pollution levels 20 to 215,000 times in excess of standards for a third of those firms tested.⁶

These violations affect not only Mexican citizens, but U.S. citizens as well, because so many of the Maquiladora firms operate along the common border. The relocation of firms in Mexico is simply increasing output of pollution per unit of production globally.

### D) A Possible Explanation For An Apparent Contradiction

It would appear that a contradiction is before us. On the one hand, pollution control costs are relatively minor, on the other hand, U.S. firms operating in Mexico appear to be violating environmental laws with considerable regularity.

A way out of this apparent contradiction follows: Firms may relocate in Mexico primarily for other reasons, especially cheap labor, and then find they can give profits an additional boost by violating environmental standards. In other words, once in Mexico, there is a strong incentive to pollute. The savings associated with noncompliance can be substantial.

The following chart reveals the percentage increase in profit margin that firms can enjoy without having to pay pollution compliance costs. The industries, listed by their Standard Industrial Code (SIC), were chosen from a list of industries highlighted in the February, 1992 "Review of Mexican-U.S. Environmental Issues." This review found that compliance costs did not account for a large percentage of total costs, thus there was no incentive to relocate. However, by not paying for pollution abatement these same industries can dramatically increase their profit margins. Thus, the strong economic incentive to violate environmental laws is created.

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³ "Information on Environmental Regulations and Enforcement," May 1991, U.S. GAO.

⁴ "Assessment of Mexico's Environmental Controls for New Companies," August 1992, U.S. GAO.

⁵ "U.S. and Mexican Management of Hazardous Waste From Maquiladoras Hampered by Lack of Information," Nov. 1992, U.S. GAO.

⁶ "Border Trouble: Rivers in Peril," May 1991, National Toxic Campaign Fund.

**CHART: THE POTENTIAL PROFIT BOOSTS FROM COMPLETE  
NONCOMPLIANCE WITH ENVIRONMENTAL LAWS:**

SIC Code:	Industry Name	Return on Sales in percent	Pollution Control as percent of Operating Costs	Profit Boost Gained by Non- compliance in percent
2911	Petroleum Refining	3.2	9.3	281
2874	Phosphorus Fertilizer	4.4	6.7	146
3241	Hydraulic Cement	5	6.1	116
3341	2ndary Nonferrous metals	2.2	6.1	271
3349	Misc. Metal Work	3	5.8	188
2816	Inorganic Pigments	5.6	5.7	96
2865	Cyclic Crudes & Interm.	2.6	5	187
2491	Wood Preserving	2.4	4.9	199
2077	Animal Fat/Oil	1.6	4.8	295
2869	Industrial Organic Chems	5.7	4.7	78
2812	Alkalies and Chlorine	3.2	4.5	136
2833	Medicinals and Botanicals	2.2	4.2	187
3369	Nonferrous Foundries	2.7	4.1	148
2822	Synthetic Rubber	6.7	4.1	57
3312	Blast Furnaces, Steel	3.7	4.1	107
2873	Nitrogenous Fertilizers	1.9	4	207
2819	Industrial Organic Chems	5.2	4	73
2621	Paper Mills	2.9	3.9	131
2631	Paperboard Mills	4.2	3.8	87
3321	G & D Iron Foundries	2.9	3.8	127
2892	Explosives	4.4	3.7	80
Average gain:				160%

(Raw Data on Pollution Control as Percentage of Operating Costs from Review of U.S.-Mexico Environmental Issues, February, 1992. Raw Data on Return on Sales from Industry Norms and Key Business Ratios, Dun & Bradstreet, 1991-92. Calculation of gain based on following formula:  $X = (((100-R)*P)+R)/R$ , where R = Return on Sales, and P = Pollution Control as Percent of Operating Costs. Chart Compiled by Friends of the Earth)



We realize that the neighboring chart should be read with a certain amount of caution. Return on sales is not a perfect proxy for operating costs. Also, many firms may be undertaking some pollution control and not bypassing it entirely. Therefore the chart presents a true 'worst case'. Finally, returns on sales may fluctuate considerably year to year. Even with these qualifications, the point comes through very clearly that industrial sectors with narrow profit margins and moderate regulatory costs can obtain tremendous boosts in their profits by not undertaking full pollution control measures. If they do nothing to protect the environment, firms in these sectors will likely see their profits more than double.

A possible new pattern becomes apparent. While some firms may find lower environmental costs a reason to move in the first place, many more will be attracted to Mexico by lower labor costs. Once there, however, the temptation to pollute and boost profit margins may be tough to resist.

#### E) Does the NAFTA Address This Problem?

No. The current text of the North American Free Trade Agreement (NAFTA) fails to offer a cure for the enforcement problem. The closest that the Agreement comes to addressing enforcement is in the investment chapter. This chapter meekly encourages, rather than requires, countries **not to lower their standards** in order to attract investment. If a situation arises where standards seem to have been lowered to attract investment the Agreement only calls for non-binding 'consultations.' Furthermore, this section applies only to the levels at which standards are set, not to their enforcement.

The Agreement also fails to provide funds for a trinational environmental commission. This commission is needed to tackle environmental problems associated with free trade as they arise. The NAFTA also does not provide for the possibility that disparities may widen if one country passes stricter standards, while the other countries keep their standards at current levels.

The new U.S. President, William Clinton, has endorsed the NAFTA agreement, but spelled out that the trade pact must be accompanied by parallel agreements on enforcement of environmental laws, enforcement of labor laws and the creation of a Trinational Commission on the Environment. Clearly, decisive action in the field of enforcement of environmental laws is needed and should be linked to the NAFTA itself.

Strong parallel agreements in these areas are critical, without them the NAFTA threatens to create in Mexico an even worse 'pollution haven' than already exists today.

Chairman GIBBONS. All right. Fine. We will accept all of the statements, the only caveat being if it is too thick, we may have to edit it a little bit.

Ms. DURBIN. Certainly.

Chairman GIBBONS. That is the only thing, just to save a little printing cost.

Ms. WALLACH, you filed suit again today. Do you think it is going to be any more successful than your NAFTA suit?

Ms. WALLACH. We filed suit today?

Chairman GIBBONS. That is what I understand. You requested an environmental impact statement on NAFTA, and today on the Uruguay round.

Ms. WALLACH. We are certainly looking into filing a suit, but it hasn't happened today.

Chairman GIBBONS. Oh, well, I was informed it had been filed today. I am sorry.

Ms. WALLACH. It might be ESP, but I don't think it happened.

Chairman GIBBONS. OK. All right.

Ms. WALLACH. But certainly we are looking into that very possibility because from an environmental and consumer perspective, as you have all said, the Uruguay round has much more dire implications, and the provisions are quite clear, and many of them, it would be pretty easy to do an analysis on the impact of U.S. laws, and as Mr. Nader noted, that just simply hasn't been done. There is not even a list of the laws that would be changed, much less other natural resources or investment-type implications.

Chairman GIBBONS. Well, I think we are trying to improve our own environmental awareness as Members of Congress and as Members making laws in a very difficult field like this. There is a need to improve that ability and to be able to mesh the trade negotiations with reasonable environmental standards. In future negotiations, we will try to improve our ability to get these points across.

We are caught in a very evolutionary process. As I said with Mr. Nader, starting on December 14 last year, we had this one little shaky agreement dealing with some manufactured goods. We now apparently have an agreement that deals not only with manufactured goods, but most of the rest of the world's commerce. That in itself is a huge step.

We did not want to and I don't believe we will lower any of our environmental laws because of this. It is my belief that the statement that I read to Mr. Nader when he was here, the impact of the World Trade Organization on our own basic law is still the law of the land and will be the law of the land if this is ratified.

Ms. WALLACH. Sir, may I comment on that?

Chairman GIBBONS. Certainly.

Ms. WALLACH. It is, as Mr. Nader said, technically accurate, legally accurate that in fact nothing that the WTO does is self-executing in domestic law, but the circumstance would be that if one of the WTO dispute panels ruled against a U.S. environmental or health law, under the new dispute resolution within 60 days, it would have to be appealed or unanimous opposition to stop it, even assuming it was appealed 90 days later through the appeals system which is within the same WTO structure and is closed and se-

cret. That whole process would be done. There would be a panel ruling. Again, you have to have unanimous opposition to stop it. This same procedure after a reasonable amount of time occurs as far as putting in place sanctions. So that after a limited amount of time, the U.S. Congress could find itself in an ultimatum position.

The WTO can't come change the laws in the books, but it can say, "U.S. Congress, you may either change this law or force a State to change it or you pay because we are going to enable trade sanctions," and neither of these options if it is one of our beloved popularly supported environmental or consumer laws is a good option. Get rid of it or pay a ransom to keep it, and we wouldn't have to be put in that situation if, A, the rules didn't snag so many of our laws and, B, if the dispute resolution system treated environmental health and other social matters differently than, say, subsidies and tariffs, but that is the no-win situation Congress will face.

Similar to what happens with the tuna-dolphin challenge, only under the existing GATT, there is the emergency break of requiring consensus to adopt. So that, in that case, the United States exercised it, though politically difficult. If tuna-dolphin happened under the new WTO rules, the Congress would have to decide, kill that law or start paying perpetually, keep it in place. That is the threat. Concerning the budget situation, we can imagine what would happen to Flipper.

Chairman GIBBONS. I believe I understand your point.

Mr. HOUSMAN. Mr. Chairman, if I may, just to expand on that briefly, I recognize that laws will inevitably be challenged. In the United States, we have a history of challenging our laws. Our environmental laws are challenged by environmental groups, they are challenged by industry, and they are challenged by the government. Whether through the legislative or judicial processes, our laws will be challenged. I support that fact. It helps us refine our approaches to problems.

I have no problem with challenges if they are done through a process that is democratic in nature. One of the beauties of our system is that if there are questions about, for example, our Superfund law—

Chairman GIBBONS. I want to tell you the way that law has been interpreted by the bureaucrats—

Mr. HOUSMAN. I recognize that.

Chairman GIBBONS [continuing]. They are chasing down filling station operators for doing what was perfectly legal. I used to work in a filling station as a kid. I know how filling stations operate. They are chasing down the poor filling station operators. The crankcase oil he is being required to pay for to clean up was really my oil. He just took it out of my crankcase and got rid of it. Now, are they going to come back against me with some of this silly the-polluter-pays thing or am I going to have to go back to whoever sold me the oil? That polluter-pay principle, I helped develop the polluter-pay principle. I never envisioned that anybody would stretch it to the ridiculous position that it has been stretched.

I have seen them try to clean up Superfund sites in my area, and the people that do the cleaning up are the lawyers. It is ridiculous



the way that law has been interpreted by the bureaucrats, and there is not any cleanup going on, but there are some of the damnest lawsuits. Half of the lawyers in Tampa practice environmental law. It is the most lucrative field.

One-third of all new engineers in my community are environmental engineers, and I don't see a hell of a lot of difference in the environment.

Mr. HOUSMAN. Well, Mr. Chairman, if I may—

Chairman GIBBONS. It has got to be a game, and I think we need to really look at some of these laws and see whether they make any sense or not.

Mr. HOUSMAN. That process is ongoing in the Congress right now, and it will be the environmental community's responsibility to ensure that the laws stay strong and address our environmental needs, and it is going to be Congress' responsibility to weigh those concerns along with the concerns of the business community.

Americans in general, and environmentalists in particular, are willing to stand up in democratic situations with fair processes and fight for the laws we believe are right, but the agreement's dispute resolution system is not democratic. Dispute resolution under the agreement would be very different from looking at our laws rationally within our own democratic processes. It is a nondemocratic review process whereby only governments can participate. Those with the actual interests, like the service station owner you mentioned, Chairman Gibbons, or at the one end of the spectrum the person who lives next to that service station, are not allowed to participate at all. That is what makes disputes under the agreement different from our democratic processes, and that is what makes it of greater concern. It is not that our laws will be challenged. It is the way in which our laws will be challenged that is of primary concern.

Chairman GIBBONS. I understand that. I understand about standing and all the problems that you have in deciding who can come into court, who can participate, and I think in an evolutionary manner, we will develop a more democratic process of considering these things.

Well, I have got to go vote. There has been very good testimony today, and this will conclude our hearing today. We are going to resume on February 8 at 9:30 in this room. February 8, that is not very far away, is it? Next Tuesday.

Thank you very much.

[Whereupon, at 5:12 p.m., the subcommittee was recessed, to reconvene at 9:30 a.m., Tuesday, February 8, 1994.]



# TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

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TUESDAY, FEBRUARY 8, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON TRADE,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9:30 a.m., in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. Good morning, ladies and gentlemen. Let's get started. I apologize for being a little late, but I was in another conference.

I have got a rather long opening statement here, and I will try to get through it as quickly as possible. At the request of Mr. Crane and others, we will keep this record open so that others that are interested can submit statements; and we are interested in learning, not just creating a record.

This morning the subcommittee continues its hearings on the trade agreements resulting from the Uruguay round of multilateral trade negotiations. Before we begin our consideration of the subject at hand, however, I would like to read a statement I released yesterday on this week's negotiations in Washington under the U.S.-Japan framework agreement.

The statement is as follows:

Japanese Prime Minister Morihiro Hosokawa is scheduled to come to Washington at the end of this week to meet with President Clinton as the first set of negotiations under the U.S.-Japan framework agreement concludes. In August of last year, I met in Tokyo with Prime Minister Hosokawa and his top officials. I wasn't the only one there. In fact, nine members of the Trade subcommittee also attended. I indicated then and reiterate now my full support for the U.S. objectives in the framework talks. Japan's record trade and current account surpluses, both with the United States and the rest of the world, are irresponsible, unsustainable, economically and politically, and have just been a thorn in the side of the international community for far too long.

My hope is that February 11, will begin to make improvements, or that the Japanese will begin to make improvements in their tariff offer on the Uruguay round, and good, substantive agreements on government procurement, insurance, automotive trade and



many other areas. These agreements must provide for tangible and measurable results.

Far too long we have dealt with Japan in just broad terms and have ended up being unable to measure any progress and being very disappointed in the outcome. And that is the reason for going for tangible and measurable results with the Japanese. If they do not, the United States should reject these agreements and pursue an alternative course of action that will truly restore some semblance of balance and equity to our bilateral trade relationship.

Today we will be hearing from administration and the private-sector witnesses on the subject of two key Uruguay round agreements: Those on antidumping and subsidies countervailing duties. Our first panel is composed of Ambassador Rufus Yerxa, Deputy U.S. Trade Representative, and Jeff Garten, the Under Secretary of Commerce. They will offer the administration's overview of the two agreements and the issues related to their implementation.

Following Ambassador Yerxa and Secretary Garten, our second panel will focus directly on several specific issues likely to arise in the debate over implementing legislation. This panel has been organized in a somewhat different form from our other panels this morning. The members of this panel, four senior trade practitioners, joined by former Assistant Secretary of Commerce, Eric Garfinkel, who will moderate this panel, together will discuss several key issues and specific options for their implementation as the case might arise of actually antidumping or countervailing duty investigation. After the second panel, there will be two panels of additional private-sector witnesses.

Ambassador Yerxa and Secretary Garten, welcome. Ambassador Yerxa, I understand you will be testifying so that you can join Ambassador Kantor, who is testifying in front of the Commerce Committee in the other body starting at 10 o'clock. Ambassador Yerxa, please go ahead and proceed.

#### **STATEMENT OF HON. RUFUS H. YERXA, DEPUTY U.S. TRADE REPRESENTATIVE**

Mr. YERXA. Thank you, Mr. Chairman.

Chairman GIBBONS. We didn't leave you much time, I am afraid.

Mr. YERXA. Well, I understand that that hearing has been pushed back to 11 o'clock, so hopefully Secretary Garten and I can both be available for your questions and discussions. I have submitted some testimony to you, but I don't want to make a lengthy prepared statement. I will submit that for the record, Mr. Chairman, and just say a couple of things.

Chairman GIBBONS. Let me say at the outset that all statements will be printed, entirely, in the record, so all witnesses understand that.

Mr. YERXA. Let me just say at the outset that, of course, you have heard from Ambassador Kantor before the subcommittee—his general testimony on the Uruguay round agreement. I think it states very clearly the administration's reasons for moving forward with this agreement, and press a very persuasive case for speedy implementation by the Congress.

I wanted to begin, Mr. Chairman, by indicating that we in the administration are working very, very rigorously on preparing the

draft implementing measure. We have already begun contact with your subcommittee and its staff. We are anxious to begin this process, and hope that you and the subcommittee look forward to what will be another long tradition of cooperative undertakings between the administration and the Congress to successfully implement trade agreements.

I want to say a few things about the antidumping and subsidies agreements, which USTR and the Commerce Department jointly worked on. Both of our teams participated in those negotiations, I think in a very successful endeavor, to achieve agreements which carry out the mandate that was set down for us at the beginning of the Uruguay round, namely, to strengthen discipline over foreign subsidies and foreign procedures, such as antidumping procedures, to ensure that those types of procedures don't become nontariff barriers to U.S. exports; but at the same time, to ensure that U.S. law to discipline unfair foreign trading practices, unfair dumping, unfair subsidy practices in the U.S. market was retained.

I believe that we have achieved an agreement here which successfully protects the interests of U.S. industries that use these laws to provide a secure and very clear discipline on unfair practices.

This was an issue, as you know, Mr. Chairman, that was very vigorously debated in Geneva, and we were committed at the very outset to maintaining the strength of our laws. We indicated to our trading partners that we would walk away from any agreement that didn't successfully preserve the antidumping remedy in the United States.

But for many countries in Geneva, rolling back our laws was a priority objective. And in preparation for the completion of these negotiations, Members of Congress and U.S. industry have identified several important issues that had to be addressed in the so-called Dunkel text. I believe that the outcome of the negotiations in December, with which Under Secretary Garten and I were both very intimately involved, carried out the objectives and concerns that were raised. We succeeded in winning agreement to an explicit standard of review which was considered to be very, very important to the U.S. industry.

We greatly improved a number of other provisions in the Dunkel text. There were about 11 U.S. proposals that we identified at the beginning of that negotiating process that needed to be secured, and I think we have succeeded in obtaining reasonable results in the vast majority of those; and both Under Secretary Garten and I and our technical team are here to answer any specific questions you might have on those issues.

I want to say, Mr. Chairman, that you and several members of the committee came to Geneva at a crucial time in the negotiations. You helped us make it very clear to our trading partners the sense of priority and importance the Congress attached to these issues, and that was extremely helpful to us in the final phase of the negotiations.

With respect to the subsidies issue, I am going to let Jeff Garten speak at greater length about it, because his department has the overall responsibility for administering these provisions of law and in administering many of the programs concerned, including, of



course, countervailing duty law and a number of the domestic subsidy programs which are at issue in this area.

Certain concerns have been raised about whether or not we achieved an agreement which will successfully discipline foreign subsidy practices. While I understand the underlying reasoning behind those concerns, I think the analysis of some of the critics of this agreement does not accurately reflect the agreement and how it will operate.

I think, clearly we came out of this with a subsidies agreement that provides much, much greater discipline over injurious subsidy practices, and/or trade-distorting practices, than anything that has existed in the GATT system before. It greatly tightens the definitions for serious prejudice and other elements that are necessary to prove a subsidy complaint in the GATT; and as you know, Mr. Gibbons, the 1979 subsidies agreement was a profound disappointment in that we were unable to secure through the GATT real meaningful discipline over domestic subsidy practices.

This text, not only in tightening the definitions, but in creating a clear category of where presumption of serious prejudice would exist once a subsidy is above a certain amount, definitely strengthens our ability to attack the most trade-distorting forms of subsidies; that is, production subsidies, direct support by other countries to industries in overcapacity and industries in which trade frictions have been the greatest.

At the same time, we recognize the need to have certain clearly defined categories of permissive subsidy, because quite frankly, all countries, including the United States, engage in certain kinds of governmental assistance. For example, in the research field—and we crafted definitions here which protect legitimate programs in these areas, but which are narrowly drawn so that they cannot become a funnel through which greater production support by other countries would occur—we are interested in working with you, working with the Congress in ensuring that how we implement and monitor this agreement will not allow those to become a form of abuse or a loophole in the system.

But I want to emphasize that this was extremely important to maintain numerous U.S. programs, and I think Under Secretary Garten's testimony will go into greater detail, where, quite frankly, the United States leads the world in providing certain kinds of assistance to research which ends up being of general benefit to our economy.

I will stop there, Mr. Chairman. We obviously want to answer questions and engage in dialog with the members about your concerns in the antidumping and subsidies areas.

Let me mention one other point, just quickly, before closing. One of the critical industries for the United States and one of the major concerns of the negotiations was the question of the aircraft and aerospace industries. This is an industry which produces the largest trade surplus of any sector, about \$28 billion in 1993.

Aircraft issues, as you know, have been very contentious between the United States and the European Union throughout these negotiations. I believe that the result we obtain by essentially placing civil aircraft under the disciplines of this new subsidies agreement will have benefits of immense importance to the future of our air-



craft sector and to maintaining the kind of necessary discipline over the proclivity of foreign governments to develop an aircraft industry by putting massive production supports in place. We were faced, frankly, with an effort by the Europeans to gut any effective discipline in this area by having a separate civil aircraft agreement, which really would have been less disciplined than we have today, even under our bilateral arrangement with the European Union.

The United States refused to condone or accept that result. We insisted that aircraft be brought under the subsidies agreement; and while the bilateral agreement between us and the Europeans remains in place, the United States does retain the option, if European subsidies aren't sufficiently disciplined, to proceed under the provisions of the new subsidies agreement.

So I will conclude there, Mr. Chairman; and once again, I and my capable legal counsel are available to answer any questions.

Chairman GIBBONS. Thank you.

[The prepared statement follows:]

*Testimony to the Committee on Ways and Means  
Subcommittee on Trade  
Ambassador Rufus Yerxa  
Deputy U.S. Trade Representative  
February 8, 1994*

**THE URUGUAY ROUND**

***Introduction***

Mr. Chairman, it is a pleasure to be here today to discuss with you the Uruguay Round agreement, which sets the stage for a more competitive and prosperous nation in the coming years and into the next century. I look forward to working with you this spring as we prepare the legislation that will implement the Round, which I hope the Congress will approve.

On December 15, 1993, 117 countries concluded a major agreement to reduce barriers blocking exports to world markets (in agriculture, manufactured goods, and services) as well as to create a more fair, more comprehensive, more effective, and more enforceable set of world trade rules. In order to assure the efficient and balanced implementation of the agreements reached, they also created a new World Trade Organization (WTO).

The Uruguay Round Final Act is the largest, most comprehensive trade agreement in history. The existing GATT system was incomplete; it was not completely reliable; and it was not serving U.S. interests well. The new agreements open up major areas of trade and provide a dispute settlement system which will allow the U.S. to ensure that other countries play by the new rules they have just agreed to.

President Clinton led the effort to reinvigorate the Uruguay Round and to break the gridlock, which had stalled the negotiations despite seven years of preparation and another seven years of negotiations. The Administration believes that the Uruguay Round agreement, when implemented, will justify the years of hard work and frequent disappointment that has marked the seven-year negotiating process. It is the largest, broadest trade agreement in history and is shaped to the strengths of the U.S. economy.

The United States is uniquely positioned to benefit from the Uruguay Round trade agreements and the new world trade system it will create. U.S. workers will gain from significant new employment opportunities and additional high-paying jobs associated with the increased production for export. U.S. companies will gain from significant opportunities to export more agricultural products, manufactured goods and services. U.S. consumers will gain from greater access to a wider range of lower priced, higher quality goods and services. As a nation, we will compete; and we will prosper.

Specifically, this historic agreement will:

- o cut foreign tariffs on manufactured products by over one-third, the largest reduction in history;
- o protect the intellectual property of U.S. industries such as pharmaceuticals and software from piracy in world markets;
- o ensure open foreign markets for U.S. exporters of services such accounting, advertising, computer services, tourism, engineering and construction;
- o greatly expand export opportunities for U.S. agricultural products by limiting the ability of foreign governments to block exports through tariffs, quotas, subsidies, and a variety of other domestic policies and regulations;
- o assure that developing countries live by the same trade rules as developed countries; and
- o create an effective set of rules for the prompt settlement of disputes, thus eliminating shortcomings in the current system which allowed countries to drag out the process and to block judgments they did not like.

This agreement will not

- o limit the ability of the United States to set its own environmental or health standards;
- o erode the sovereignty of the United States to pass its own laws; or
- o impair the effective enforcement of U.S. antidumping and countervailing duty laws.

Ambassador Kantor testified last week on the overall benefits of the Uruguay Round Agreement for the United States. I will concentrate my remarks today on several aspects of the negotiations that are of particular interest to this Subcommittee -- antidumping, subsidies and countervailing measures, and aircraft.

### ***Antidumping***

The new Antidumping Agreement is one of the greatest achievements of the Uruguay Round. The Agreement successfully protects the interests of U.S. industries that use the U.S. antidumping laws domestically to fight injurious dumping and advances the interests of U.S. exporters that are subjected to antidumping investigations with ever-increasing frequency.



The Agreement will enhance the competitiveness of U.S. industries in both domestic and export markets.

The antidumping issue was fiercely debated in Geneva. We were committed to maintaining the strength of U.S. antidumping laws, and we made it clear that we would not accept an agreement that eroded the key protections of our antidumping law. For many nations in Geneva, however, rolling back U.S. antidumping laws was one of the highest priorities.

In preparation for the completion of the Uruguay Round negotiations, Members of Congress and U.S. industries identified several issues that would have to be addressed to make the so-called Dunkel Draft Antidumping Agreement acceptable to the United States, including: standard of review, anti-circumvention, sunset, union and employee standing, and cumulation.

As of December 1, 1993, there was neither any support for U.S. proposals to improve the Dunkel Draft nor any set procedure for consideration of such proposals other than the assertion that changes would be made only by consensus -- a virtually impossible condition. Notwithstanding these circumstances, our negotiators were successful in attaining our objectives.

- o We succeeded in winning agreement to an explicit standard of review, perhaps the most important benefit of the agreement. The provision, based on our drafting, acknowledges that there may be more than one permissible interpretation of the agreement or facts and requires panels to defer to permissible interpretations by WTO members.
- o We removed the Dunkel Draft anti-circumvention provision. Because there is no explicit reference to anti-circumvention in the text of the agreement, it does not inhibit the application of current U.S. anti-circumvention provisions. The Dunkel Draft contained an anti-circumvention provision that would have significantly weakened existing U.S. protections against the circumvention of antidumping and countervailing duty orders.
- o We were able to greatly improve the "sunset" provision so that antidumping and countervailing duty orders will not terminate automatically after five years if there is a reasonable likelihood that the lifting of the order would harm the industry. In contrast, the Dunkel Draft would have required virtually automatic termination of antidumping and countervailing duty orders after five years.
- o The final text recognizes the existing right of unions to file and support antidumping and countervailing duty petitions and defines the degree of support required for

initiating an investigation. The lack of such definition under the existing Codes left U.S. initiation practices vulnerable to challenge.

- o We added a provision expressly authorizing the ITC's practice of "cumulating" imports from different countries in determining injury to a domestic industry. Although the Dunkel Draft included such a provision in the Subsidies Agreement, the absence of a cumulation provision in the Antidumping Agreement would have created an unnecessary uncertainty and opportunities for challenge.
- o We also were able to correct several "technical errors" in the Dunkel Draft Antidumping Agreement concerning sales at below cost, price averaging, calculation of dumping margins, and the measurement of negligible import volumes.

In addition to these changes, there are other important aspects of the final Antidumping Agreement that make it a good agreement for the United States. One such aspect is the transparency and due process requirements proposed by the United States at the beginning of the Uruguay Round and accepted in their entirety. As a result of the Agreement, U.S. exporters will have defined rights to be notified of and participate in antidumping proceedings, to access information, and to judicial review. These new requirements will benefit U.S. exporters by significantly improving the fairness of other countries' antidumping regimes.

The Agreement also incorporates important aspects of U.S. antidumping practice not previously recognized under the 1979 Antidumping Code. These fundamental aspects of U.S. antidumping practice are now immune from GATT challenge. For example, the agreement expressly authorizes the International Trade Commission's "cumulation" practice of collectively assessing injury due to imports from several different countries.

The Antidumping Agreement will require some changes in existing antidumping law. These changes, however, will not jeopardize our ability to combat injurious, unfair trade practices. At the same time they will have the significant benefit of adding valued predictability to all antidumping practices, and protecting conforming U.S. practices from GATT-challenge.

### ***Subsidies and Countervailing Measures***

The Subsidies Agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies non-actionable, provided they are subject to conditions designed to limit distorting effects.

The Agreement sets forth (for the first time in the GATT) the definition of a subsidy and the conditions which must exist in order for a subsidy to be actionable. U.S. rules on "specificity" and U.S. countervailing duty practice with respect to the specificity of sub-

national subsidies are now internationally approved. The Agreement extends and clarifies the 1979 Subsidies Code's list of prohibited practices. It also introduces a presumption of serious prejudice for subsidies greater than 5 percent or subsidies provided for debt forgiveness or to cover operating losses.

Countervailing duty rules have been made more precise, and the effectiveness of the U.S. countervailing duty law and practice have been preserved. For the first time there is international acceptance of U.S. "benefit-to-the-recipient" calculation methodologies.

Multilateral subsidy disciplines will be introduced for developing countries (another first). The value of this should not be discounted. Given that the Uruguay Round package will be accepted as a "single undertaking," all WTO Members will be subject to a framework for the elimination of their export subsidies.

All of these provisions will work to the advantage of U.S. industries which rely on export markets but which face subsidized competition.

The Agreement does set out three types of government assistance which are non-actionable where specific, strict criteria are satisfied:

- (1) assistance for disadvantaged regions (the criteria explicitly prevent targeting aid to companies or industries);
- (2) assistance to adapt existing plant and equipment to new environmental requirements; and
- (3) assistance for basic industrial research and pre-competitive development activity.

With regard to the "green light" safe harbor for government R&D assistance, let me start by noting that the United States Government provides more R&D assistance to industry than any other country.

The 1991 Uruguay Round Draft Final Act on subsidies would not have provided green light safe harbor protection to important existing programs having broad bipartisan support, including:

- o Cooperative Research and Development Agreements (CRADA's) in the Department of Energy and other agencies,
- o the Partnership for a New Generation of Vehicles,



- o the Advanced Technology Program at NIST,
- o Sematech,
- o biomedical research and commercialization at NIH,
- o NASA's aeronautics programs, and
- o the Technology Reinvestment Project and other cost-shared dual use programs of the Defense Department's Advanced Research Project Agency (ARPA).

These programs support and create thousands of jobs across the country. They enhance our ability to stay on the leading edge of technology. Without the assurance of freedom from countervailing duty actions or dispute settlement in Geneva, many of our industries would not be willing to engage in such cooperative research. We as a country would be the loser.

In response to the urgent concerns of our science and technology community and a bipartisan group of Members of Congress, we sought incremental changes to the 1991 Uruguay Round Draft Final Act to increase our ability to promote government-sponsored research programs. The final text of the Subsidies Agreement reflects the structure of existing, longstanding, bipartisan U.S. technology programs.

Only two operative changes were made to the 1991 Uruguay Round Draft Final Act. The permissible levels of government assistance (50% of basic industrial research and 75% of "pre-competitive activity") were not selected at random. Rather, they reflect the level of assistance provided in U.S. programs. This also is true of the choice of the first non-commercial prototype as the cut-off for the green light safe harbor. This cut-off will ensure that we will be able to continue to provide the type of R&D support which we already provide while ensuring that other countries cannot provide development or production subsidies free from countervailing duty actions or dispute settlement in Geneva.

The Administration succeeded in molding the R&D green light safe harbor to fit existing U.S. technology programs, while excluding the type of development and production assistance which other countries typically grant.

This provision will not be a loophole:

- (1) The criteria for entitlement to claim green light coverage are clear and limiting.
- (2) The only way to secure green light status is to get the approval of the Subsidies Committee. I can assure you that this Administration intends to

scrutinize all requests for green light status very carefully. (A country is not required to notify a program to the Committee, but if it does not, it does not get green light status).

- (3) Even if the Committee grants green light status, it will be rescinded where a particular R&D program leads to production which causes serious adverse effects to another WTO Member.
- (4) In addition, the Agreement requires the Subsidies Committee to review the R&D provision after 18 months. This will give us an opportunity to correct any deficiencies that have come to light.
- (5) Then, there is the ultimate safety valve-- both the non-actionable subsidy provisions and the provisions establishing a rebuttable presumption of serious prejudice expire automatically after 5 years unless we agree that they should stay in effect.

With these five safety valves, I do not believe there is the potential of a loophole. Indeed, I believe we struck the appropriate balance between strict subsidies discipline and protecting the cooperative government-industry partnerships which have existed for years in the United States.

### *Aircraft*

We got a strong result on the issues crucial to the aircraft and aerospace industries, which produce the largest trade surplus (\$28 billion in 1993) of any sector. Aircraft trade issues were contentious throughout the negotiations because the European Union sought to exclude aircraft entirely from the disciplines of the new Uruguay Round Subsidies Agreement. Instead, the EU appeared intent on having a revised Agreement on Trade in Civil aircraft entirely supersede any new subsidies agreement for aircraft products.

In the final week of negotiations, it became clear that the draft Aircraft Agreement had serious shortcomings. That text, if adopted, would have provided no new disciplines on production or development subsidies, nor would it have increased public transparency of government supports to aircraft manufacturers, such as those to the Airbus Consortium. Instead, the proposed revised Aircraft Agreement would have weakened those disciplines by allowing additional subsidies. Most significantly, past supports to Airbus would have been "grandfathered," completely exempting them from action under Subsidies Agreement. Moreover, certain provisions of the text might have provided a pretext for unjustified GATT action against our military and NASA research programs -- programs that have also provided benefits to the Europeans and are in no way comparable to the immense state subsidies that have been systematically provided to Airbus for civil aircraft development and production.

While we worked hard to negotiate to remedy these insufficiencies, U.S. proposals were not adequately reflected in revisions to the Aircraft Agreement. Such an outcome was clearly unacceptable both to the U.S. industry and to the U.S. Government. Just days before the end of the negotiations, the U.S. stood firm and refused to accept the draft Aircraft text as the basis for an agreement.

As a result of our resolve, the EC, and subsequently all other countries negotiating the Uruguay Round, agreed to bring aircraft under the stronger disciplines of the new Agreement on Subsidies (with only minor changes) and the more expeditious and certain dispute settlement procedures contained in the UR dispute settlement agreement. The Subsidies Agreement will be applicable to all civil aircraft products including aircraft of all sizes and types, engines and components, and to all WTO member countries. This was the principal objective of the U.S. aerospace industry, which produces the largest trade surplus of any U.S. manufacturing industry, an estimated \$28 billion in 1993.

We continue to seek improvements in the existing disciplines on government support for aircraft development, production and marketing currently contained in the 1979 GATT Agreement on Trade in Civil Aircraft and to expand the coverage of that agreement to other countries that produce civil aircraft. Those negotiations will continue with the goal of reaching agreement by the end of 1994.

### ***Conclusion***

Mr. Chairman, it appears that Congress will be considering the Uruguay Round implementing legislation at an auspicious time for America. The U.S. economy is expanding; investment is increasing; jobs are being created; and optimism about the prospects for our economy is growing. This economic expansion reflects the fact that this country is moving in the right direction; and we are doing it together. The policies of the Clinton Administration, starting with our budget plan; the adjustments made over the last several years by our workers and companies -- all of our efforts make us as a nation stronger and more competitive.

In setting the negotiating objectives for the Uruguay Round, Congress clearly signalled its belief that strengthening the multilateral rules of the GATT would make America more competitive in world markets. We succeeded. We met those objectives; and I am convinced that the new multilateral rules agreed to in the Uruguay Round will work together with our ongoing efforts to increase regional cooperation. America is uniquely positioned to benefit from expanding trade -- in this hemisphere and in the world. The Uruguay Round builds on our strengths. It will benefit us, and the world economy as a whole.



Chairman GIBBONS. Secretary Garten.

**STATEMENT OF HON. JEFFREY E. GARTEN, UNDER SECRETARY FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE**

Mr. GARTEN. Thank you, Mr. Chairman. It is a pleasure to be here. This is my first official appearance in the House.

Chairman GIBBONS. You will be here a lot more, I can tell you that.

Mr. GARTEN. I am one of the newer members of the administration, and I would like to say at the outset that I do not have a background in trade law. I have been an investment banker for the last 15 years. So to the extent I bring something to this, it is a broader understanding of the world economy and some of the changes that are occurring, both in the corporate sector and among countries.

I did, however, have the chance to participate in the last several weeks of the Uruguay round, and many of my views are heavily influenced by that very intense experience. Working under the guidance of Ambassador Kantor and alongside Ambassador Yerxa. It was a wonderful experience.

I have a long background in negotiations, but I can tell you with no hesitation that the success that I believe we achieved in the Uruguay round was very much a function of both Mr. Kantor's and Mr. Yerxa's willingness to walk away from agreements that didn't meet our interests.

Chairman GIBBONS. Just a moment. Would those of you who have to stand in the back please come around to the side so that if we get any other visitors, at least they have a way to get in the door. I didn't want to run anybody out.

I am sorry about this very small room.

Mr. GARTEN. I would like to say, as well, Mr. Chairman, I appreciate your remarks on the Japanese issue. I have been spending a good deal of my time in those negotiations as well. In fact, I left them to make this statement here, and I will be returning to them, I share your view that we have a very major challenge on our hands, and that one way or another, we have to find a way to crack open those markets.

Chairman GIBBONS. May I interrupt here and just say, in all my years here in the Congress, nothing has been more frustrating than trying to bargain with the Japanese. We never seem to make any progress. We always run up the hill, get very excited about some move that they are making, and then come away very disappointed.

I realize they are a huge trading partner, but they have promised for 20 years that I can remember that they would open their market; and I frankly just don't see it opening. And they have told us, well, you don't try hard enough, and I come back and talk to American businesspeople, and they say we try, Mr. Gibbons, we just can't get in. And that has been going on, as I say, for 20 years. Something has got to be done about it.

It is time for some very vigorous counteraction, if we don't really succeed in this little negotiation we have going on now.

Mr. GARTEN. Mr. Chairman, let me just summarize my view and the view of Secretary Brown and the Commerce Department of the overall negotiation, really quickly, and then I would like to get into the antidumping and countervailing duty area.

I feel that the Uruguay round is an excellent deal for the United States. I think it helps us in our efforts to open foreign markets. I think it preserves our laws against unfair trade. I believe it is very consistent with the administration's strategy of having a very aggressive trade policy, not only for the sake of open trade, but for the sake of the vigor of the American economy and the creation of jobs at home.

This agreement will lower tariffs and nontariffs for U.S. manufacturers. It will open markets and create fairer trade in agriculture. It will advance the protection of intellectual property rights. It will integrate textiles into the GATT with a 10-year phaseout of the multifiber agreement.

It will bring more developing countries under GATT discipline. It will expand coverage of the Government Procurement Code. It will establish rules in many critical areas related to business, such as product standards, import licensing and customs valuation. It will strengthen the dispute settlement mechanism, and it will create a more effective framework for multilateral trade under the World Trade Organization. In my view, those are not insignificant accomplishments for one agreement. To the contrary, I think that we have quite a bit to be proud of.

I don't want to belabor the interests of the United States in an open world trade system, because I think we have come to take that for granted. But I would like to emphasize the need for vigilance in a world economy that has become so interdependent, so porous and so fraught with opportunities for companies and countries to dump their products in our markets or to subsidize their products.

One of the major goals of these negotiations was to protect American laws against unfair trade practices, and on this account, I believe we succeeded well beyond our initial expectations.

I think it is critical to understand what the starting point was in the last months of the Uruguay round negotiations. It wasn't like we had a clean slate and could basically write the provisions that we wanted. The so-called Dunkel text was totally unsatisfactory to us with regard to our trade laws, and in the face of overwhelming opposition in the antidumping area, I would say in the face of unanimous opposition, we made tremendous strides. And again, I would like to congratulate Ambassador Kantor and Ambassador Yerxa for what was really a come-from-behind victory.

I would like to give you a quick summary of what I consider to be the major provisions of both the antidumping and the countervailing—and the subsidies countervailing duty code. To me, the critical point in the antidumping area is that we preserved our laws, but we struck a balance, the right balance, between the needs of American exporters facing these kinds of laws abroad and the need to protect the interests of American companies that use the laws at home.



We achieved, I believe, a dispute settlement mechanism with a standard of review which is very much in our interests and which basically prohibits the panels from second-guessing U.S. law.

The Dunkel text began with a provision, a sunset provision, which would have all but automatically eliminated all of the cases after 5 years. There is now a 5-year review, but duties can continue if there is a likelihood of dumping or injury.

A third area was anticircumvention. There were provisions in the Dunkel text which would have eviscerated our own laws relating to anticircumvention and the setting up of screwdriver plants. We managed to get these provisions totally eliminated from the code.

The Dunkel text would have prohibited U.S. workers and unions from filing petitions. This right was completely restored.

The Dunkel text was silent on the issue of cumulation. In fact, it was worse. There was a cumulation provision in the Subsidies Code and by its very absence in the Antidumping Code, the inference was that there would be no cumulation, no ability to cumulate, no ability of the ITC to determine injury on the basis of cumulating the impact of imports from several countries.

We were successful in inserting the cumulation provision in the Antidumping Code. And there were a variety of technical corrections which I won't go into, but which are very important in the calculation of dumping margins.

In the subsidies area, I totally agree with everything that Ambassador Yerxa said. I think we achieved a tremendous amount in a code that now has much tougher disciplines, but which at the same time protects some of our vital programs, particularly in the technical area, programs which are essential to the restoration of American competitiveness.

The Subsidies Code now contains much clearer definitions as to what constitutes a subsidy and definitions about how subsidies can cause harm. It adopts U.S. countervailing duty rules for determining whether a subsidy has been provided to a specific firm or industry.

There are various categories in the code, as you know, categories that are sort of a traffic-light approach, with a green category that allows certain subsidies and shields them from challenge by the GATT or from countervailing duty laws. It is in this area where we were able to protect our research and development—our research, actually, not development—research that is essential for some of the technology programs that are very important to this administration, but which have been important to previous administrations as well.

Another feature of the Subsidy Code which I think is quite important is the presumption that subsidies over 5 percent would cause injury.

I would like to just conclude by saying that I believe this is the best agreement that we could have reached, given the fact that we were in a multilateral setting in which many countries were already against us.



When I was confirmed in November, I pledged that the effective implementation of the laws against unfair trade would be my highest priority; and as we move forward with implementing legislation and as we continue the daily administration of these laws, I would like to recommit to you that I—neither I nor the Commerce Department generally has a higher priority than making sure that our laws are effective.

Thank you, Mr. Chairman.

[The prepared statement and attachment follow:]

TESTIMONY OF JEFFREY E. GARTEN  
UNDER SECRETARY OF COMMERCE  
FOR INTERNATIONAL TRADE

BEFORE THE COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE  
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1994

Introduction

Mr. Chairman, Members of the Committee: It is a pleasure to be here today to discuss the achievements of the Uruguay Round agreements, focusing in particular on the results of the antidumping and subsidies negotiations.

Uruguay Round Gains

For seven years, U.S. trade negotiators under the leadership of three successive administrations devoted their physical, intellectual and emotional energies to the successful completion of this negotiation. This agreement is a success for the United States because our negotiators had both the courage to say no to a bad deal and the leadership to coalesce support behind a final package in December 1993 which promises great benefits both for the United States and the global economy. I believe that the Uruguay Round agreement is a groundbreaking achievement in advancing free and fair trade in an increasingly complex and interrelated world economic setting. Let me review some of the more important gains in store for the United States.

This historic agreement will result in:

- o lower tariff and non-tariff barriers to U.S. manufactured

products. For ten vital industrial sectors (construction equipment, paper and pulp products, medical equipment, brown distilled spirits and beer, steel, agricultural equipment, furniture, pharmaceuticals, toys and printed materials), U.S. exporters will now face no duties at all in many lucrative foreign markets. In addition, very substantial duty reductions were achieved in such key export sectors as scientific equipment, semiconductors and computers as well as harmonization at very low rates of chemical sector tariffs in primary foreign markets.

- o rules to protect the intellectual property of U.S. entrepreneurs in such industries as pharmaceuticals, entertainment and software products;
- o fair competition and open markets in agriculture;
- o integration of textiles into the GATT system, with a ten-year phase-out of the Multifiber Arrangement (MFA);
- o greater participation of developing countries in the global trading system in that developing countries have committed to more fully accept the market-oriented global trade rules established by this agreement;
- o expanded coverage of the Government Procurement Agreement to services and construction which will provide new opportunities for U.S. exporters;
- o an effective system of improved and enhanced "rules of the road" in such areas as standards, import licensing, customs valuation, rules of origin and preshipment



inspection which will lead to a more open, equitable and predictable trading system;

- o a revised and revitalized dispute settlement system that provides the means of ensuring that trade disputes will be addressed in a more certain, timely and effective manner; and
- o a successor institution to the GATT, the World Trade Organization, which will ensure the full, effective implementation of the revitalized trading system; require, for the first time, the full participation of all members; and provide a permanent, comprehensive forum to address the new or evolving issues of the 21st century global market.

#### Clinton Administration Steps Toward Greater Competitiveness

The Uruguay Round agreement opens up an immense opportunity for the United States to turn to its advantage the many other initiatives which the Administration has undertaken over the past year to enhance the ability of American firms to compete in the global economy. Within the last year, the Clinton Administration took up the challenge on a variety of fronts to harness or energize those elements of U.S. public policy which directly affect how well our firms can do against their foreign rivals. It was the year when the draining budget deficit was finally brought under control; a year when long term interest rates dropped significantly -- in large part because of President Clinton's new fiscal policies --

allowing a surge of new investment to occur; a year when Presidential attention turned to educating and training our workforce to compete effectively in the decades ahead; and a year when civilian research and development policies, designed to rejuvenate the U.S. technological base, took on new direction and focus; a year when great efforts were made to help much of our defense-industrial complex to convert to new business activities.

On the trade front, it was a year in which Washington established a National Export Strategy for the first time, an aggressive set of policies which could transform America's approach to opening markets; a year in which Japan and the United States agreed to a new approach to trade negotiations -- the "Framework" Talks; a year when a historic agreement, NAFTA, was concluded leading to further economic integration of the North American market; and a year when President Clinton invited the APEC leaders to Seattle to focus an intense light on closer economic ties in the Asia-Pacific region. It was a year which culminated in the conclusion of the global Uruguay Round trade negotiation, an unprecedented agreement in both its scope and its implications for greater and fairer commercial opportunities for U.S. firms and workers.

It is now our responsibility to embrace these opportunities and take the additional steps necessary to make the promise of the Uruguay Round a reality. To prosper, we must follow the

President's dictum -- "compete, don't retreat" -- and the Uruguay Round has opened up an enormous new playing field for the United States.

#### Uruguay Round Achievements Affecting U.S. Trade Laws

Opportunities alone are not enough. If America is to compete successfully, we have to not only understand that the world is our market -- we must also prepare for and develop responses to those aspects of economic globalization which can surreptitiously hinder our ability to take full advantage of the opportunities which await us. We live in a world characterized by the internationalization of both trade and production, a marketplace where national borders mean less and less and where exchange rates, stock markets and consumer confidence are often as affected by developments in Singapore and Seoul as they are by policy changes in Berlin, Brasilia or Beijing. In such a fiercely competitive and chaotic environment, the temptation and the opportunities to compete through unfair advantage can be quite compelling. Volatile exchange rates make prices unpredictable and difficult to monitor. The location of production can shift overnight. Unfair trade practices can be implemented with lightning speed, and can outstrip the ability of national authorities to understand what is happening before serious damage is done to the domestic industry. All this underscores the need to maintain our vigilance against unfair trade competition, both through the vigorous application of trade laws as well as through the development of multilateral disincentives



against engaging in such competition. Aggressive competition should be welcomed, but deftly disguised predatory pricing and government subsidization must not be permitted to undermine the benefits of free global trade competition.

As the world gets smaller, and our marketplace expands, we also have to realize that we can no longer hope to assure the protection of U.S. interests merely through a series of national responses. The preservation and promotion of U.S. commercial interests requires that we increasingly turn our attention and resources to multilateral settings. As multilateral decisionmaking necessarily assumes greater weight in the resolution of international trade disputes, we have an important stake in persuading our trading partners that the hallmarks of U.S. jurisprudence find their origin and rationality in the finest standards around the world. No nation can legitimately lay full claim to the concepts of fairness, due process and transparency. However, we can justifiably take pride in the standards that have helped a country as diverse and competitive as the United States ensure that each party gets a fair and open hearing. We, therefore, have a responsibility to ourselves and to the rest of the world to make certain that the settlement of commercial differences by multilateral authorities under multilateral rules is faithful to the kind of standards which have worked so well in the United States. While the United States will always be a leader of multilateral initiatives, our views on individual issues or

disputes will not always prevail. We therefore need to make sure that the system operates such that we will know there was a fair and equitable consideration of the differences.

Following from these realities of the modern commercial world, while we can see that the opening of markets is critical to securing the growth and competitiveness of the U.S. economy, our policies must also be buttressed by specific, affirmative measures to counter unfair trade practices and to revitalize our own manufacturing capabilities. As the agency responsible both for the enforcement of U.S. antidumping (AD) and countervailing duty (CVD) laws and for the promotion of public/private partnerships in the development of new technologies, the Department of Commerce has a special concern and sensitivity towards how the Uruguay Round agreement affects the application of international trade rules. On this score, I can report to you with confidence that the Uruguay Round agreements on antidumping and subsidies effectively promote the interests of the United States. The outcome of both negotiations meaningfully advances the ability of U.S. manufacturers to compete in both the domestic market and abroad.

#### U.S. Negotiating Objectives

The United States looked to fulfill a variety of objectives in these negotiations.

In antidumping, where we faced stiff opposition from a host of

countries, we had to ensure that the effectiveness of U.S. law was preserved while at the same time hold other governments administering antidumping laws accountable to the same standards of transparency and due process that we apply under our system. Put another way, we had to take into account the protection of our firms operating in the U.S., and those operating abroad.

In subsidies, while we also strived to maintain the countervailing duty law as an effective remedy against subsidies in the U.S. market, we looked beyond our borders to the establishment of strong, new multilateral rules which would discipline the most distortive subsidies and extend the availability of effective remedies to foreign markets.

All of these goals were substantially met.

#### U.S. Negotiating Results

How was this achieved?

First, the agreements have enabled the United States to maintain tough and effective laws against unfair trade. This is critical for several reasons. U.S. manufacturers need to be assured of the fact that they do not have to compete in the U.S. market against injurious, unfairly traded imports made possible either by the deep pockets of protected foreign competitors or by the deep pockets of foreign government treasuries. More broadly,



effective unfair trade remedies are key to maintaining a base of support in the United States for an open world trading system. Indeed, international trade rules have for decades recognized that the ability to respond to and offset injurious dumped and subsidized import competition is an integral aspect of the liberal trading system. These remedies need to remain reliable and accessible as an insurance for the expansion of world trade and the further opening of markets. The Uruguay Round agreements provide for this, and the Administration is fully committed to ensuring that the AD and CVD laws remain a prominent feature of an aggressive yet liberal U.S. trade policy.

Second, the assurance of fair trade in the U.S. market alone is no longer sufficient to provide for the competitiveness and prosperity of U.S. firms and workers. U.S. exporters need to know that their increased access to foreign markets will not be prejudiced by the application of foreign AD/CVD laws that in the past have not lived up to U.S. standards of openness and due process. This, too, has been achieved in the Uruguay Round agreements. Virtually all of the U.S. proposals relating to the transparency of investigations, the rights of participants, the access to information, and the guarantee of judicial review were incorporated into the final agreements. This will go a long way towards eliminating the possibility that the fate of U.S. exporters will be decided in the proverbial "black box."

Finally, in the area of subsidies, the agreement strikes a fine balance which comprehensively and successfully addresses the competitive interests of the United States. The new subsidies agreement represents a landmark step forward in defining and strengthening international disciplines over the most distortive kinds of subsidies. It also protects those technology development activities in which the United States has the lead and which are crucial to our ability to compete successfully in the global marketplace. In particular, the subsidies agreement will enable the United States to continue to integrate its trade and technology policies in a way that is critical for the revitalization of the U.S. economy.

#### Specific Accomplishments

Negotiations were extremely difficult and controversial. While the United States did not feel changes to the 1979 Antidumping Code were essential, many of our trading partners wanted changes that would have literally crippled the effectiveness of our AD and CVD laws. Their efforts culminated in the Dunkel Draft of 1991 which would have severely restricted effective AD/CVD enforcement. Almost without support from other countries, we were able in December 1993 to reverse all of the worst elements of the Dunkel Draft.

Mr. Chairman, if I could add, on a personal note, my own recollection of what happened and why. Shortly before the final

phase of the negotiations, the principals of the National Economic Council convened to discuss strategy for the "end game." It was decided in no uncertain terms that no matter how much we were able to achieve in other areas of the negotiations, we would not sign an agreement that weakened our laws. Ambassador Kantor, Secretary Brown and others could not have been clearer on this point. But as late as two weeks before the deadline neither the GATT leadership nor the other negotiators believed that we would really walk away. I was very proud to have been part of the team, lead by Mickey Kantor and Rufus Yerxa, which took such an unambiguously tough stand in the face of what began as unanimous international opposition. I might add, as well, that the presence of several congressional delegations in Geneva helped enormously to drive home the message to our trading partners that there was no compromising when it came to the integrity of our laws.

Dispute Settlement: Our most important achievement was in the area of dispute settlement. The new World Trade Organization (WTO) dispute settlement process is much more effective than under the prior GATT system. Whereas in the past parties could almost interminably delay the resolution of disputes, now dispute settlement proceedings will be subject to strict deadlines and the findings of panels will be binding. The United States encouraged and applauded this development, but recognized a need for special rules for panels reviewing AD and CVD actions and interpreting the relevant agreements. We will, of course, faithfully follow all the



rules explicitly required by the agreements, but we could never agree to let panels substitute their judgement for that of the experts at the Department of Commerce and the International Trade Commission, or create, through "interpretation," additional rules never agreed to through negotiation. Our goal has been fully achieved with special rules for panels to follow when deciding disputes between WTO members on application of AD and CVD laws.

There are some specific changes which will affect U.S. practices in applying the AD and CVD laws. The most important ones follow.

**Sunset Provisions:** There will be reviews of AD and CVD orders every five years to determine if they are still serving their purpose. These so-called "sunset" reviews will enable us to continue duties if their removal would likely lead to renewed or continued dumping and injury. This is in stark contrast to the Dunkel Draft which would have made the continuance of duties beyond five years nearly impossible.

**Anti-Circumvention:** Since 1988, the United States has had legislative authority to take action to prevent the circumvention of antidumping and countervailing duty orders through the establishment of screwdriver assembly operations in the United States or in third countries. The Dunkel Draft would have placed fatal restrictions on our ability to exercise this anti-

circumvention authority. The final agreements totally eliminated these restrictions. If the WTO members are able to craft uniform international rules on the application of anti-circumvention authority through the process of consensus, we will of course adopt them. Until that time, we remain free to apply our current laws against circumvention of AD and CVD duties, and to improve these laws as conditions change.

**Standing:** The Dunkel Draft would have stolen from U.S. workers the right to file AD and CVD petitions to protect their livelihoods from injurious dumping and subsidization. This right has been completely restored with the agreements. In addition, we have obtained clear and precise rules for determining the degree of support needed by domestic management or labor to justify the initiation of AD and CVD investigations. The lack of guidance in the prior Codes led to adverse GATT panel rulings with the potential to invalidate fully justified duties on narrow technical and procedural grounds.

**Cumulation:** Under existing U.S. law, the International Trade Commission has the authority to determine injury on the basis of the cumulative impact of imports from several countries that are subject to simultaneous AD or CVD investigations. The ability to perform such a cumulative injury analysis has been specifically authorized in the final Antidumping Agreement. While the Dunkel Draft had done so for CVD, it was silent on antidumping. The

potential loss of this authority would have been disastrous for our antidumping law. Our objective here was fully recognized.

Technical Corrections: We were also able to correct several technical problems in the Dunkel antidumping text dealing with determining when sales are at less than cost, price averaging, expression of dumping margins, and determining negligible volumes. While too technical for discussion here, these changes corrected problems which could have had a severely negative effect on antidumping determinations.

#### Improvements in Subsidies Code

While the Dunkel Draft on Subsidies shared some of the problems outlined above, such as in the areas of dispute settlement and sunset provisions, it also represented a great improvement from the 1979 Code in the development of effective multilateral disciplines on subsidies. The 1979 Tokyo Round Subsidies Code places virtually no constraints on the use of subsidies because it has ill-defined terms and standards for showing trade harm from subsidies, and the dispute settlement rules allow losing parties to block adverse decisions. Under the Uruguay Round agreement, we now have clear definitions, workable rules for showing how subsidies cause harm, and an enforceable dispute settlement system. This will be of immense value to the U.S. in those situations where the damage to American producers comes through competition with unfairly subsidized production in foreign markets. The combination



of clear rules for defining subsidies, definitions of the "adverse effects" which subsidies cause, and the new binding dispute settlement system provided for the first time a remedy, in addition to countervailing duty law, to protect our industry from unfair subsidies.

The Subsidies Agreement takes a "traffic light" approach. "Red-light" or prohibited subsidies are forbidden. The prohibited subsidies include export subsidies, and subsidies that are provided on the condition that the subsidy recipient uses domestically-produced goods in its production. "Green-light" subsidies are shielded from both multilateral disciplines and application of countervailing duties. These include, under stringent conditions which will prevent abuse and harm to domestic producers, certain subsidies for research and carefully circumscribed development, certain subsidies for economically deprived regions, and subsidies of up to 20% of the cost of equipment required for bringing existing facilities into compliance with new environmental regulations.

All previous negotiating drafts of the Uruguay Round subsidies agreement included a provision for green-light subsidies; the concept is not a new one. Moreover, while the U.S. has always had concerns about the impact of exempting certain subsidies from potential trade actions, most of the industry advice we received indicated that a carefully limited green-light category would be an

acceptable counterpart to the establishment of better subsidy disciplines overall. Our goals, therefore, were to see that the green-light provisions would not subject to abuse and did not serve to protect others' programs without at least permitting us to protect U.S. programs. As noted above, this was a particular concern in the R&D category. We recognized that the Dunkel formulation could endanger many current and past U.S. technology initiatives while fully protecting the assistance programs of some of our largest competitors.

In view of the unbalanced nature of the R&D green-light category, we achieved some significant improvements.

First, the categories of basic and applied industrial research were redefined and partially merged, and the limit on protected government share of costs was raised. This will provide a safe harbor for existing U.S. government technology programs which have varying caps on government share and do not follow the Dunkel division between basic and applied research. Examples of such programs which would have been at risk under the Dunkel Text include Commerce's Advanced Technology Program, the Technology Reinvestment Project (defense conversion) funded through the Advanced Research Projects Agency of the Defense Department, and Department of Energy's AMTEX Partnership textile program (R&D collaboration between DOE labs and the domestic textile industry) and Clean Coal Program. These are just a few examples of the many

USG technology programs that can now be protected under the revised Subsidies Code -- programs which began long before this Administration assumed office but to which we have redirected Federal resources with the active cooperation of Congress. (See attached annex of programs.)

Second, a category of very narrow development assistance was created with maximum protected government participation limited to 50 percent. Protection stops after the production of the first, non-commercial prototype. Also, the caps are averaged for programs which cover both categories. These, too, were essential to the preservation of our programs.

The last important aspect of the R&D provisions is that civil aircraft R&D subsidies are not eligible for protection from either multilateral or CVD action. The current U.S.-EC bilateral agreement on aircraft continues to apply.

Another change from the Dunkel Draft is that the notification process is no longer the only way to obtain protection from dispute settlement action or countervailing duties. Notification required detailed disclosure of all facts of subsidy programs and their examination by the WTO to obtain green-light protection. This posed particular concerns for U.S. industry and the Federal technology agencies as it could have led to our having to reveal information about the strategic direction of R&D as well as



competitively valuable information about the actions of U.S. firms. Now, green-light notification is optional, with governments either free to use the notification process, or to show how they have met the green-light rules in the context of a case which challenges their subsidies. If the green-light criteria are shown to have been followed, no duty or restraints may be imposed.

The two other types of subsidies included in the green-light provision relate to assistance for regional development and assistance to meet new environmental requirements. In both cases, the agreement sets forth a series of criteria that are designed to limit the circumstances in which non-actionable subsidies can be provided and/or the amount of assistance which would be considered non-actionable. The regional development provision contains a number of strictures designed to prevent the gerrymandering of regions to be considered eligible for assistance. Just as important is the requirement that regional assistance be provided such that no individual recipient or group of recipients can be targeted for government aid -- the assistance must be generally available and generally used within the eligible region, a principle which was further reinforced in the final agreement.

The environmental compliance provision limits both the amount of assistance which may be provided and the circumstances in which it may be provided. The assistance must be to enable facilities to meet new environmental requirements imposed by law or regulation,

and it is limited to 20 percent of the costs of adaptation. Furthermore, it must be a one-time measure which covers neither the cost of replacing or operating the facility nor any manufacturing cost savings which may be achieved.

To reinforce these limitations, we must be prepared to step up our monitoring and surveillance of other countries' subsidies and the manner in which they are complying with the green-light criteria. The Department of Commerce is committed to developing an organized approach for policing compliance with the green-light provisions, working in cooperation with the Congress, the private sector and other government agencies. If the new agreement is to work the way it is supposed to, we have a responsibility to redirect some of our resources towards ensuring that the multilateral system works correctly. If it doesn't work to our satisfaction, the agreement permits us to discontinue the green-light category after five years time. This is our ultimate safeguard.

All other types of subsidies (i.e., those not prohibited or protected) are in the "yellow-light" category. They may be subject to countervailing duties if injury is shown, or subject to multilateral action if adverse trade effects in other markets are demonstrated. A special feature of the latter provision is that adverse effects are presumed to exist in various circumstances, such as if the subsidy exceeds 5% of the value of the subsidized

product. Though the presumption can be rebutted by the subsidizing government, this new rule will be of great benefit to the United States where we choose to use multilateral remedies. Even where the 5% level is not reached, the new objective measurements provided in the Agreement for showing adverse trade effects are a great step forward in our efforts to curb and remedy unfair subsidies.

### Concluding Thoughts

Frankly, in both the antidumping and subsidies realms, there are other areas where we were not successful in achieving our goals. Additional clarity would have been desirable for dealing with diversionary dumping, treatment of start-up costs, minimum profit levels, and firmer recognition that injurious dumping is an internationally condemned practice. In the Subsidies and Countervailing Duty Agreement, the rules for phasing out special treatment for developing countries remain more generous than we wished. We also would have preferred that the newly increased level of effective multilateral subsidies discipline not restrict our right to apply countervailing duties.

I will not claim that our antidumping and countervailing duty laws and practices will not be affected by this Agreement; they will. There will be cases in which dumping duties are lower than they would have been previously, where countervailing duties may not be applied, or where duties are terminated earlier. However,



the overall effectiveness of our laws will be maintained. The new degree of detail, compared with the 1979 Codes, also provides invaluable recognition and protection of the most critical elements of current U.S. practice. For example, our law allowing fair value for antidumping purposes to exclude foreign prices below cost has been largely adopted, and the Antidumping Code is in fact less restrictive in some cases than our own law. Similarly, in its definitions of the types of actions which constitute subsidies and in determining when subsidies unfairly benefit certain industries (so-called "specificity") the Subsidies Agreement hews very closely to our own practice.

The explicit recognition of U.S. practice in the agreements will make successful challenge by other in WTO dispute settlement proceedings very difficult, particularly when combined with the explicit guidance given to panels in conducting their reviews. However, it was inevitable that in agreements as detailed and specific as these, one would find some differences from some of the current laws and practices of the United States. Nonetheless, I believe that many of the changes, such as a preference for comparing average prices to average prices or special treatment for certain types of subsidies are not on their face unreasonable. Furthermore, we have sufficient latitude in crafting and applying our laws to prevent abuse. We will exercise that latitude aggressively to protect our producers from injurious dumping or subsidization.

Of course, it is never possible in any negotiation to walk away with a perfect agreement. In the end we had to determine whether these agreements were in our interests, and whether our most important objectives were achieved. On both accounts, I firmly believe that they are.

#### Administration of the Law

We fought hard, and with little support from others, to successfully maintain the effectiveness of our antidumping and countervailing duty laws. I will follow through with continued vigor in the application of our laws in investigating unfair trade complaints, always respectful of the requirements of our own laws and the need for fair treatment of all parties. I know we have the fairest, most open, and most effective antidumping and countervailing duty system in the world and I pledge to keep it that way.

I also can assure you that this Administration will use the new tools given us by these Agreements and the WTO dispute settlement system to ensure that our domestic industry receives fair treatment from foreign governments. This will require continued vigilance and prompt assistance to our exporters who are not treated properly, and they will receive it.

When I was confirmed by the Senate in early November, I pledged to the Congress that I would vigorously uphold and

administer the U.S. trade laws, and that I would make this my number one priority as Under Secretary of Commerce. I was dead serious then, as I am now. With the leadership and support of Secretary Ron Brown, the Department of Commerce worked alongside Ambassador Kantor and his team to fight for the preservation of our laws in the face of overwhelming opposition. But even though the negotiations are over, our work is hardly begun. We have implementing legislation ahead, and we have the daily administration of the laws. Let me, therefore, pledge to you once more that I will do all that I can to uphold our vital interests in this area.

Thank you for the opportunity to appear before this Committee. I would be happy to answer any questions you may have.



ANNEX  
SELECTED UNITED STATES GOVERNMENT TECHNOLOGY PROGRAMS

Department of Commerce

- Advanced Technology Program

Department of Defense, Advanced Research Projects Agency

- SEMATECH Research and Development Consortium
- Technology Reinvestment Project
- Flat Panel Display Program

Department of Energy

- AMTEX Partnership program (R&D collaboration between DOE labs domestic textile industry)
- Clean Coal Program
- United States Advanced Battery Consortium
- Clean Car Program (Partnership for a New Generation of Vehicles)
- General Atomics CRADA (National Storage Project)
- National Storage Laboratory/Hierarchical High Performance Storage System Testbed (industry-led, collaborative project centered at Lawrence Livermore Laboratory)

Department of Health and Human Services, National Institutes of Health

- Cooperative Research and Development Agreements Program (over 150 CRADA's--Partnerships between the Federal government and the private sector, many of which are small businesses to translate research into useful healthcare projects)
- Small Business Innovation Research (SBIR) Program

National Aeronautics and Space Administration

- ARCJET Propulsion Project (though completed, illustrative of the type of projects NASA intends to emphasize in the future in response to Clinton's technology initiatives)
- Centers for the Commercial Development of Space Program (17 Centers established to encourage the development of space-related commercial markets and products)
- Consortium for Materials Development in Space

Multi-Agency Projects

- High Performance Computing and Communications Program (DOE, ARPA, NSF, NIH, NSA, NOAA, EPA, NIST)
  - Technology Collaboration with Industry include:
    - Concurrent SuperComputing Consortium
    - National Consortium for High Performance Computing
    - Gigabit Testbed Program
    - NSF's National Supercomputer Centers and Science and Technology Centers
    - Computational Aerosciences Consortium
    - The Consortium on Advanced Modeling of Regional Air Quality

Chairman GIBBONS. Thank you, Ambassador Yerxa. Thank you, Secretary.

Secretary Garten, your maiden voyage so far has been successful. We will see before you get out of the room whether it is completely successful or not.

Let me say I come into this environment as not a red hot fan of our antidumping laws. I think they are overreaching, by and large; I think they are highly artificial and that they need some correction.

I read Senator Danforth's criticism of the subsidy agreement. I have got to say, frankly, I am more in his corner on that. I really don't like subsidies. I think they are the Achilles' heel of all of this international agreement and that I don't like managed trade. I don't think I am smart enough to manage it myself, and I don't think anybody I have ever met is smart enough to manage it. And I think we really walk on very shaky ground when we think we can manage trade.

I realize that subsidies have been here a long time, that we have done some of them indirectly ourselves, particularly in research and in development, and that they need some kind of discipline. But I must say I wish I had spent more time during our trip to Geneva looking at the Subsidies Code and giving suggestions on that. I think I personally fell down in that regard.

You have seen—let me address this to both of you. You have seen Senator Danforth's criticism. You seem to kind of answer it here, but not with any great vigor.

I am worried about what Senator Danforth brought up. Are we going into managed trade? Have we started down that slippery slope?

Mr. GARTEN. Let me first try so that Rufus gets the worst of this.

Chairman GIBBONS. All right.

Mr. GARTEN. I would like to answer it with vigor, because I think that the way that we treated research was very much in the American interest.

I think we should go back to where we started. The Dunkel text had a provision for research, and the provision was highly conducive to advantages on the part of the Europeans who, as you know, are chronic subsidizers. We have had over the years technology programs that receive government funds. These programs, many of them—and I have provided a whole list in my formal statement—many of these programs began in previous administrations.

When the Clinton administration arrived, it was extremely clear that the reinvigoration of the U.S. technological base was going to be a major national priority, and it set in motion more programs that involved government-industry cooperation; that is an essential part of the administration's strategy.

We felt that both the past programs and the programs that are being developed now—I might add, with tremendous bipartisan support—were jeopardized by the Dunkel text as it existed. The language in that text basically mirrored the European research system. The categories did not fit our categories.

So we—what we achieved was, we created new language, which we worked out with the Europeans, that allows us to fuse what we call basic research and applied research, but which in the agree-

ment, in order to get an agreement we had to change the words. Industrial research and precompetitive research. But we stopped those subsidies before development, and we didn't do this lightly.

It wasn't Rufus and me in a room trying to define this. We were hooked in from Geneva—well, first of all before, but in Geneva to the technological community and the government. We were very, very careful with these definitions, and we said that subsidies are not permitted when it comes to product development, which is, of course, what the Europeans would have liked. And under their definitions, if you looked at the definitions in their programs, they were poised to shoehorn in programs that we would call development.

So we feel that we achieved protection of current U.S. programs—and I want to say this vigorously, because I—in the 3 or 4 months that I have been in the administration, I can't think of an issue that really reached to the core of our trade and technology policy like this one. It isn't a question of more vigorous U.S. subsidies; it is a question of preserving programs that already exist, that increase our competitiveness, and at the same time limiting, very clearly limiting the thing we are most concerned about, which is the subsidies of the Europeans.

When it comes to Japanese subsidies, as someone who has lived in Japan for several years, I can tell you we will never understand those. So this is, you know—whatever provision we have, what we call subsidization will occur, in other ways there.

But when it comes to the European subsidies, I think we achieved quite a bit.

Mr. YERXA. Mr. Chairman, I have some passing familiarity with your views on both antidumping and subsidy issues.

Chairman GIBBONS. I hope so, or I have wasted a lot of time.

Mr. YERXA. Having worked with you in the past on both of these areas, and what I would call numerous—

Chairman GIBBONS. Chats.

Mr. YERXA. Well, shall we say "undertakings" in the past where we had some difficulties—I am thinking back to the mid-1980s, and I know of your very strong concerns and interest in this area.

I would like to say two things, first with respect to dumping. I think I certainly recognize, as well as you, that there is a balance to be drawn here. We need to have effective measures to deal with truly injurious pricing practices which large companies—particularly in Japan, but elsewhere in the world—can successfully undertake in a way which can cause some real instability in the market.

But we also need to recognize that competitive pricing is a function of a competitive world economy and that it is going to take place and that U.S. firms engage in it as well as foreign firms, and we need to be cognizant of the fact that as the world's biggest exporter, we do not want countries to have the ability to just sort of arbitrarily define everything in the pricing realm as unfair.

I think we have been careful to strike that balance. In fact, I think that this outcome—which, by the way, is different than the 1979 outcome; in the 1979 outcome, it was a code among a certain number of countries that signed on. The Antidumping Code was not a universal agreement.



One of the great benefits of the Uruguay round is that all of the rules that are reflected in this agreement, the rules on customs valuation, import licensing, antidumping, subsidy practices, all of them are a single undertaking that are applicable to all 115 countries that signed on. We now have rights against these countries in the GATT, if they exercise import licensing or antidumping measures in a way that violates the important provisions of this agreement. And the more we reduce foreign tariff barriers and reduce quantitative restrictions and measures at the border that these countries maintain against us, the more will be their tendency to move into the more arcane and hidden forms of protection.

Import licensing, for example, is one of the most frequently mentioned trade barriers that U.S. companies come to USTR and complain about. In the past, while we have had an import licensing code in the GATT, it was only signed by a very small number of countries. Now we have an agreement which imposes universal discipline and which gives us grounds for bringing a dispute against the country that arbitrarily denies import licenses.

I would say the same thing applies with respect to antidumping. The transparency, the due process, the fairness that are inherent in this kind of a general code, that spells out with great detail all of the requirements that governments want us to meet, is to our benefit; even though we have some things to do to make sure that we are fully consistent with it, what we have to do is very, very limited in comparison with what the rest of the world has to do, because our law generally conforms.

You know, our Assistant Secretary of State was recently in China, and he had a meeting with the foreign trade ministry in China where he thought he would get a good opportunity to complain about a number of practices and barriers that currently inhibit our access in China. And he did complain about them, but he found that they wanted to spend most of the time in the meeting talking about their plans for developing an antidumping law as a substitute for other things they have done in the past.

So I am greatly concerned that we have a GATT discipline in this area, and I am convinced that the United States will ultimately be the major beneficiary, not just in this area, but in all of the other areas of the Uruguay round.

And that gets me back to the subsidy issue, Mr. Chairman, because I think that is also true of subsidies. While I recognize that it might be highly desirable to have a world in which governments stay completely out of the business of assisting or aiding or subsidizing industries and that the United States would be well off in that kind of a world, I would assert that that world doesn't quite exist yet; and what we were faced with is the pragmatic reality of how to craft better subsidy discipline than we had before, and at the same time recognize that countries were going to worry about, you know, too much discipline.

And that is the reality of the GATT system. It has always been a tradeoff between the desire for more discipline and the desire for loopholes.

You know, one of the early Director Generals called the original GATT a series of loopholes tied together with waivers, and that certainly was the case. But I would say we are moving very much

in the direction of real discipline here. As Jeff has said, we not only have very much clarified the list of prohibited subsidies, not only de jure prohibited export subsidies, but de facto export subsidies—that is, those export measures which really act like an export subsidy—so we have expanded the list of prohibited subsidies.

We have clearly defined what constitutes serious prejudice so that we can win a dispute in the GATT. We have clearly spelled out how subsidies over a certain percentage create a presumption, so that we have an even better chance of winning. All of those measures will be extremely effective in getting at the worst kinds of subsidy practices.

Now, there is a kind of a realm of activity here which I would argue gets much more to the level of kind of general government support for the development of ideas, the development of knowledge, the development of commercially applicable ideas in which the United States is a big participant.

And, you know, all you have to do is look at the programs we have on the books, things like our cooperative research and development agencies that advance technology programs at NIST—the NASA's aeronautics programs, the technology reinvestment program run by the Department of Defense, the biomedical research and commercialization at NIH, a number of these types of programs which we believe provide very, very general benefits not only in our society, but probably internationally. Look at the definitions that we have set forth for what constitutes permissible research activity within the meaning of the new subsidies agreement in a green box. I am looking at one of the footnotes, for example, that says the term "industrial research" means "planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or bringing about a significant improvement to existing products, processes or services."

Now, these are government programs we have for a very important reason, because we think it helps to improve the overall efficiency and well-being of our citizenry; and that comes about through commercialization of a number of these ideas.

But we defined green boxes, Mr. Gibbons, which are very, very narrowly drawn. It is limited to a certain percentage of the total research costs. It must be limited exclusively to the costs of personnel, instruments, equipment, et cetera which are actually used for that research activity. It has to go to the subsidies committee of the GATT to be approved in advance before you can call it a green subsidy, which means you have to disclose to the committee exactly what the program is and how it works, and you have to demonstrate that it meets those criteria.

Now, if a government tries to funnel a lot of money through into what I would call the much more trade-distorting types of practices, those practices are not going to meet these tests; and we have to make sure in the way we implement this agreement and in the way we write our own implementing statute, that anything that goes beyond the green criteria immediately becomes capturable.

What we are really faced with in the world is government programs which are much more production oriented in nature in some big, basic industries—for example, the steel industry; the ship-



building industry, Mr. Gibbons, which I know we still have to talk about, because there is a lot still to do there. I know that is very present in your mind.

But those types of programs cannot be funneled into this form of a green box and we have to ensure that they aren't; we have to monitor an agreement in a way that they are not.

We have some important safeguards in the text. First of all, these green boxes will sunset in 5 years unless there is a decision to continue them, because we want to test by experience whether they are actually working in the narrow fashion they were designed. We have a catchall provision which says, even if you are granting those kinds of subsidies, if it has—and I can't remember the exact terminology, but I think it is "serious adverse effects" on the industries in another country, you can lose the green light protection.

My point in all of this is that in any GATT we strike, there is going to be a tradeoff. We want greater discipline, but at the same time we have to recognize that there are certain types of activities that we and other governments maintain that raise questions. What we didn't want to see was, within 6 months of this new agreement, suddenly we have GATT panel rulings saying that NIH programs or DARPA or other U.S. programs that enjoy broad bipartisan support are GATT-illegal.

Now, you can say well, why haven't countries done that in the past? I think the basic answer is that the subsidies discipline has been ineffective in the past. What I think we face now, if we want to really use this new subsidies agreement to go after the trade-distorting subsidies that exist, by other countries, we have to realize that they are going to immediately look for a case to bring against us.

That is exactly what happened in the Airbus situation which I was involved in in Geneva. As soon as we started complaining about their royalty payments scheme and direct support, they said, "Oh, but you have all of these indirect programs that are also subsidies." They want a counterclaim that they can use to blunt our efforts to get greater discipline over their subsidies.

If we were to aggressively use this new agreement to use these production subsidies and we didn't have these narrowly defined green boxes, we would have faced immediately cases against all of our technology programs.

Interestingly enough, we have gone back and looked at the actual level of subsidization granted under these programs and why they haven't been brought to countervailing duty actions in the past. The basic answer is that they do not amount to a significant or even sufficient percentage of actual subsidy to be generally worth challenging. So it isn't as if we are taking practices which have constituted huge subsidy margins in the past and making them unactionable.

I think this is very important because I sense a tendency on the part of certain critics of this particular provision to suggest that the modest tradeoff here is so outrageous that it is worth throwing out the whole rest of the agreement and that, you know, they are looking at the trees instead of the forest. The general thrust of this whole thing is toward greater discipline and toward something that



conforms more to a subsidy regime that the United States will benefit from in international trade.

Chairman GIBBONS. Well, I appreciate that very thorough discussion, and I feel a little better after having heard you discuss it; and we are going to have to look at that legislation very closely as we develop it.

Let me—because I want to go to the rest of the people here before we—before I exhaust you, let me, though, while I have both of you here in front of me, focus on a problem that is not directly GATT-related, but maybe is, and that is the status of the Canadian-U.S. agreement as far as wood products are concerned.

I am worried that we perhaps are reaching the extreme stage now in that agreement, and I would hope that together—USTR, Commerce, and the Canadians and the industry—can sit down while—while I have never been a fan of trying to settle these agreements, I always want to let the law work its way through. I think we have about reached the end of the law in this regard, and we are going to have to work out some kind of settlement of the U.S.-Canadian subsidy problem as far as wood products are concerned.

I don't know whether either one of you wants to comment on that, but I would just urge you to, please, don't let this thing become a crisis again. I think it is a unique time to settle it.

Wood products on both sides of the border are in high demand, and I regret that we are still stuck on that one issue as far as Canada is concerned. But you are going to need your best dispute settlement mechanism probably in the form of some kind of negotiation with the Canadians and the United States on solving the problem.

OK. I just wanted to bring that up.

Let's go now to Mrs. Johnson.

Mrs. JOHNSON. Thank you, Mr. Chairman, and thank you, Ambassador Yerxa, for that discussion of the issue of subsidies. It is a difficult problem, but gaining discipline in the long run is, I think, going to benefit us all. I do look forward over the course of the next few months to understanding more precisely the dumping provisions and the subsidy provisions particularly.

I also wanted to thank you, Under Secretary Garten, for your commonsense handling of the steel rod issue; and I think if we can move through some of the trade issues in that kind of mindset, that we will strengthen our economy as well as our relationships with our trading partners.

I have no questions, Mr. Chairman. I am anxious to be able to hear the examples in the panel to follow.

I thank you for your testimony.

Chairman GIBBONS. Yes. Fine.

Mr. Levin, would you like to inquire?

Mr. LEVIN. Just briefly, Mr. Chairman. I am sorry I missed the first part. I am glad I heard the latter part in response to your question or your comments.

I think the bottom line was that you did a first-rate job—at least a darn good one—at Geneva, and there were some important improvements from where we started 1 year before.

Mr. Chairman, you know, this trade issue is—these issues are so controversial, and I think we sometimes have to ask ourselves why are they such a lightning rod; and I think Ambassador Yerxa's comments somewhat reflected the volatile nature of trade issues. I think that they are so volatile and they are such a lightning rod in part because they reflect differing views of how economies work and how we respond to how other economies work.

There is, I think, a broad agreement within the Ways and Means Committee and way beyond it that the more openness, the better. But two things. There is a difference of opinion as to what happens when our economy collides with economies which are of a somewhat different model of free enterprise, and when those other models are not as open as ours, how we should react to it.

And there are some who feel that those who don't have our model only hurt themselves, so we should adhere to what we are doing without responding. But there are others who worry that that isn't always true; and I think the antidumping laws developed because of the feeling that where other nations were closed, we might sometimes be disadvantaged, and that their system was not always inferior, and we had to respond.

So I think what was done at Geneva was to try to reflect American interest in a more free and open trading system while realizing that when it wasn't free and open enough, that we had to defend ourselves, and we had to have a multilateral system that tried to bring about free and open trading; and in the meanwhile, we needed a regimen that allowed us to utilize our laws.

I think that Ambassadors Kantor and Yerxa, and also Secretary Garten, were able to effectively carry out American interests in Geneva, and I—on the antidumping you started behind, and I think you caught up with some help from business and some small help from Congress.

Second—and this relates to the issues of subsidies—there isn't complete agreement within this country as to what is the appropriate role between government and the private sector, especially in view of the practices of other countries which have a much more intimate relationship between the public and private sectors. And it seems to me that the subsidies agreement doesn't begin to resolve all of these issues, and there were at times some green lights there that I thought, and others thought, were not in the best interests of free and open trade or in the best interests of the United States.

My only plea is that I don't think those who have a particular view of the appropriate relationship between the public and private sectors—and we are not talking about worlds of differences here; sometimes they are subtle differences. For example, DARPA; no one is moving to repeal it, as far as I know. I think that we should not have the agreement reached in Geneva become kind of the football where we kick around some differing views as to the exact relationship between the public and private sectors. I think we will resolve those issues within the United States, and you can't expect the GATT to totally answer all of those issues and those differing opinions within American society.

So, in a word, I think that the agreement reached at Geneva was a step forward. I think our negotiators were able to move it consid-



erably beyond where it was, and you didn't ask me to do this, but it is a segue to the second panel.

We now need to focus on what we do next, how we implement these agreements so that they carry out the spirit of the Uruguay round agreement, and how, in cases which are effective, we try to implement and also expand our go-beyond.

So let me just—you may not want to comment on this, or you may. There has already been some discussion.

Is there anything further that either of you wants to say, or anybody else on the panel, about the implementation stage? You know, we are going to be talking about that in a few minutes. Do you want to say anything further before the second panel takes over?

Mr. YERXA. I wanted to say a couple of things.

First of all, you may choose to say that Congress only had a small part, Congressman Levin, but I have to say that as I look at the three members in this room at the dais right now, I can't think of any three people who have been more consistently and actively involved throughout the whole GATT negotiations. I think your willingness to continually help us impress on our trading partners the importance of these issues has been enormously helpful.

And I have to say, I think in numerous conversations we have had—I think my view of a lot of this has evolved, because understandably, as a trade negotiator, you go out and you look at foreign barriers and you say, gee, what do I have to do to get all of those down around the world—and I think generally we have done a good job in this agreement of attacking a lot of them.

But it was important for us to recognize and to insist upon, in Geneva, an outcome which was based on settled principles of U.S. law that were designed to deal with what you were talking about, this friction between our system, our vision of open competition, and different models of other countries, which inevitably come into clash as you start removing trade barriers. I think it was important for U.S. negotiators to recognize the need for U.S. law to clearly deal with that clash.

Mr. LEVIN. Let me just say, I appreciate your comments, Ambassador, and we have had our differences. Everybody on this panel has had their differences with each other and with you, and I think for you to talk about the evolving views rings a bell.

Mr. YERXA. Well, it gets to the question of implementation, I think, because in implementing this agreement I think we have to do a couple of things.

First, we have to recognize that we want the rest of the world to faithfully carry out the stuff that we got negotiated in this agreement. We want them to really bring about real reform in areas ranging from intellectual property, to subsidy practices, to nontariff barriers. We are getting tariff barriers down, we are integrating the developing world into the GATT, and you know—there is this new term that I am just learning—in the big emerging markets, the so-called BEMs.

Our estimates are that about two-thirds of the growth in imports by GATT members over the next 30 years will be by these big emerging markets. Not the advanced industrial countries, but the emerging economies are going to represent the lion's share of the increase in imports. That is why I think it was so important for us



to integrate them into this trading system in a way which puts some real discipline on them.

They have tariff commitments now, they have nontariff commitments, they have rules, a dispute settlement mechanism that we can use effectively; and it will, I think, very much discipline their thinking and their development.

Now, to me, that argues for an implementation by the United States, which is also faithful to the agreement, so that we set a good example. But I think we have left ourselves with the flexibility to implement it in a way which really does preserve the integrity of these trade laws and these trade procedures that we have evolved in the United States over a long practice.

I fully agree with what you said about not having this implementation bill become a kind of a proxy for a debate over industrial policy. The outcome of this subsidies agreement was not some sort of industrial policy fantasy, gone haywire. It was based on some very, very long-thought-out and long-debated principles, and it is—to me, it is a reflection of the mainstream of bipartisan thinking in the business community, in the Congress, and in the administration over how to have a decent agreement.

I think we have the chance in this implementing bill to make sure that the overall implementation of the agreement extracts the maximum benefit from our trading partners, but preserves basically the integrity of our system.

Mr. LEVIN. Thank you.

Chairman GIBBONS. Let me close briefly by just discussing schedule with you.

I realize the President is scheduled to sign this agreement on April 15. There are more negotiations to be carried out between now and then, and I hope they are successful. But considering the workload of this Congress and considering the fact that this is an election year, I think that we should all—us up here and you over there—pull together to try to get this agreement before the Congress under the fast track system as rapidly as possible. So I will ask our staff, and hope that you will, to do all that we can to try to pull this legislation together, so that the folks out there will know what is going on, so that the Congress will know what is going on.

Let's set an early deadline in our own minds. I would like to get this thing all up and out of the way by the middle of June. Maybe we can do it faster.

Yes, sir.

Mr. GARTEN. Mr. Chairman, I agree with you very much, and I just wanted to let you know that we have teams working very, very hard on the underpinnings of that implementing legislation.

Chairman GIBBONS. Good.

Mr. GARTEN. And we will be working with your staff to move it as best we can.

Chairman GIBBONS. Fine. Thank you. Thank you very much.

Thank you. Very good testimony, and I think you have a fine agreement here, really.

Chairman GIBBONS. Let's go next to our second panel, who have got a lot to discuss with us, and we will get into some real substance here.

Mr. Eric Garfinkel, Mr. Horlick, Mr. Rosenthal, Mr. Stewart and Mr. Suchman, I want to welcome you here. You can be a big help to us today in helping solve a lot of our legislative problems ahead of us.

I look at this panel, I recognize your faces, I am glad to have worked with you in the past. I look forward to really working with you in the future here. We are getting down to the guts of this thing now.

Let's see, Mr. Garfinkel, do you want to go first?

**STATEMENT OF ERIC I. GARFINKEL, SENIOR FELLOW,  
COUNCIL ON COMPETITIVENESS, WASHINGTON, D.C.**

Mr. GARFINKEL. Thank you, Mr. Chairman. It is a pleasure to be here. We are going to try and see if we can't focus this morning on the issues that are going to afford this committee, and the Congress generally, with the greatest latitude to affect policy; and we are going to try and do this by putting some meat on the bones of some of these issues, so that they don't appear too abstract.

So what I would like to do, with your permission, is set these issues up in the context of a hypothetical fact pattern, so that we can look at this in the context of real products and what the impacts might be in the marketplace. Once we go forward, I will describe the fact pattern.

I will ask each team, a team on my left, a team on my right, to respond for 5 minutes—so what we would like to have is a genuine debate that will address in rather specific terms precisely what we are talking about.

The framework is not intended to structure the debate too heavily, but again, simply to provide a context. So I don't want any of the debating teams here to get too hung up on any of the specific facts.

Chairman GIBBONS. I would like for you all to just forget we are here, forget the audience is here and debate this as you would sitting around a table, working it out as people who know what they are talking about.

Mr. GARFINKEL. All right.

Well, let me begin by describing the facts that we are dealing with. A U.S. company, Mr. Chairman, has developed a product known as a digital administrative assistant. It keeps Members informed of roll call votes, hearings, late-breaking news, results of committee and floor votes, schedules, messages from staff and things of that nature. This is the first use of the product, but clearly, it has got broader application to the corporate world.

The U.S. company is selling the product at \$2,000 a unit here in the United States, and a Japanese company enters the market with a competing technology and prices the product at \$1,500 a unit. The U.S. company brings a dumping suit against this Japanese firm. It brings it both with respect to the first generation of the product, which is basically a local area network, and, as well, against the second generation of the product which is a multicity version, which will have broader range throughout the United States.

The second-generation product is not yet in the final phase of production; it is a startup phase, as alleged by the Japanese. No orders have been shipped, but orders are being taken.

A case is brought. As I say, the petitioners alleged dumping, they alleged sales below cost in the home market, and the Commerce Department begins a cost investigation. The Japanese respondent asks the U.S. Department of Commerce to take into account the fact that with respect to the second-generation product, they are still in a startup phase of production and that even though their cost at the point in time that it is being looked at within the POI is higher than the price that they are quoting in the marketplace, the fact is that over a period of 3 months, their costs will go down as they move through the startup period and their yields, improve.

Now, the WTO specifically requires the Commerce Department to take into account this startup period and to make an adjustment to costs which takes into account these startup expenses. The question that I would like to pose to the panelists is how do we define the startup period, how long a period should it be, and how precisely should the Commerce Department go about making an adjustment for this purpose?

I would like to ask the team on my right—I don't know who is going to respond—Mr. Stewart will respond, and then I will ask this team to respond as well.

Thank you, Mr. Chairman.

**STATEMENT OF TERENCE P. STEWART, MANAGING PARTNER,  
STEWART AND STEWART, WASHINGTON, D.C.**

Mr. STEWART. Well, I think it is important to focus on how U.S. law presently operates and how it would likely operate in this type of a case. The product, as it has been defined, would likely be a single class or kind. And under existing practice, one would only be looking at an investigation of the actual sales. Where there are both sales and offers, one would only look at the sales.

So, in fact, the startup issue in this case would probably not play into—affect the terms of how Commerce conducted its investigation; it would come into effect when it got out to an administrative review.

Assuming that they made distinct, either class or kind, decisions and decided that they would include both classes or kinds, then the Commerce Department presently has the authority to extend its period of investigation. And that would be the most likely way that it could deal with the problems that are posed by the agreement.

The agreement on startup is a problem, in most instances, not in an investigation, because people are coming after actual lost sales that are occurring, but tends to be where you have a multiproduct situation, such as Eric has defined here; and specifically, when you get out into an administrative review where that later generation may just be coming onstream and you are getting the first shipments that are kicking into play.

The particular provision in article 2211 of the Uruguay round antidumping text really only goes to how costs will be allocated and leaves broad discretion to the administrator to determine how it should be done, realizing that the issue of startup will vary, depending on the type of product.



You could have a product where the startup period may only be 30 days; you could have a product where startup could be for a much longer period of time. So almost by definition, an administrator needs a certain amount of discretion in doing that.

Current U.S. practice, I would say, is sketchy only because there have been relatively few cases. Many times the argument has been made of what happened under the semiconductor agreement, which was not a dumping case, but was rather a bilateral agreement between the United States and Japan.

In the cases that we have been involved with, where startup has been an issue, Commerce has, in my opinion, adopted a fairly rational approach, which is to take a look at the costs at a later period of time, and unless there are extraordinary circumstances, which would be a semiconductor-type issue, to use those later costs as a representative cost. And that has been acceptable, I think, to both parties.

So my own view is that the startup question is somewhat of a red herring. It is much less likely to be a burning issue in real cases than it is in bilateral agreements. It will be an issue in some cases, and the definition of the key terms, such as what is the startup period, I think has got to remain flexible until we have the experience.

But we are talking allocation of costs, and from an administrative point of view, the problems I think, Eric, that you had when you were running Commerce on this area, and that others have had, is that you want to be able to limit what you are looking at to the smallest time period possible. Rationally, you would want to go back to the beginning of the R&D costs and be able to fold them in.

There are certain administrative, I think, difficulties in that, that will complicate how it, in fact, evolves over time.

Mr. GARFINKEL. Thanks, Terry.

Gary.

#### **STATEMENT OF GARY N. HORLICK, PARTNER, O'MELVENY & MYERS, WASHINGTON, D.C.**

Mr. HORLICK. Let me read you two short quotes about startups.

This is from Automotive Week in mid-1993, quote: "Saturn had its first break-even month in May. Seed money was sunk early on into Saturn by General Motors. It says, 'Saturn's early product stage was considered a research and development mode where expenses were absorbed by GM as a cost of doing business, not part of Saturn's cost.'"

Well, it is part of the cost. That is startup.

The startup lasted a couple of years. Again to quote, "A Saturn break-even goal by 1993 was part of the business plan." GM is a major exporter, it exports Saturn.

Another short quote, "The cost of the first several aircraft in a production series is higher than later ones because of production inefficiencies, and the price is initially based on the estimated cost of producing a specific number of airplanes over an estimated number of future airplanes." That is a quote from an ITC report quoting, quote, "industry executives," only two companies; you can draw your own conclusions.

DAA's to which Eric referred are a product of the computer industry. This is always cast in terms of Japanese imports into the United States. The U.S. computer industry, according to a recent ITC study, is the leader in the world. It is the leader in supercomputers, mainframes, workstations, PCs, and portables. DAA's are portables.

Compaq issued a press release yesterday noting they had taken over leadership in the portable market leapfrogging, among others, NEC and Toshiba. So I wouldn't assume this is going to be a Japanese import in the United States.

Sixty percent of U.S. computer company revenues come from outside of the United States. So here we are with a portable, and you have a startup.

Now, when you have a business plan for something like a DAA, you don't go to your board of directors and say, give me \$1 billion and, I will make you some money. You have stacks of printouts, you have a business plan, just like General Motors did. It shows that you are not going to make money on a cash-flow basis the first year.

You may well be exporting. GM had been exporting Saturns before they broke even. Boeing had been exporting large commercial aircraft long before they, "broke even" on any of their models. So you need some way of taking that into account.

The Senate Finance Committee, in explaining the famous Russell-Long amendment, said, I don't have the quote in front of me, but it is in the legislative history—you are not going to recover all of your costs in the first few years. And that is what the man from GM is telling you; it is what the aircraft industry is telling you. This is a very knotty problem.

But the key point I want to make is, it is not a matter only of how we apply the dumping law to Japan. I think this hearing would be very short if the Dumping Code were written so it applies only to Japan. Unfortunately, it doesn't. The United States is the leading target of other countries' dumping laws; it is far and away the leading target in developing countries.

So what do you do with startup? What you do is you have to look at, to some extent, what the company does normally—to some extent, what the industry does normally. You don't want the company to be able to craft a business plan in advance that will get it through a dumping case. You have to see what they do with other products.

The new agreement includes the possibility of looking at the company's normal business records, and I might add, disregarding them if they don't reasonably reflect costs. The current Commerce practice typically is to, in a rather draconian fashion, look at costs within the last fiscal year, for the last 6 months. I submit, based on what I just read about GM and U.S. aircraft manufacturers, that is not what U.S. businesses do.

So what we need, again, is a rule. It has to be fair; we can't allow unrestricted predatory pricing in the United States. At the same time, U.S. exporters are going to have to live with that rule.

Mr. GARFINKEL. Thanks, Gary.

Any further comment? You have got 1 minute on this side.

Mr. STEWART. I guess the only concern is that there is now an agreement. The agreement defines what you do if you find yourself in a startup.

My initial comment was that in most cases that have been brought—which are not on Airbus and which are not on automobiles—the reality is, people haven't been in startup. The article now defines what you do if you are in startup. And the concerns that Gary raises undoubtedly are not unrealistic, but you are dealing with what the administrations around the world will do in light of what the article specifically says.

The article says, if you find yourself in a period of startup, you will take the latest costs you can and those costs will be used for purposes of determining what the cost of the product is. So it is not—this is not really a debating issue.

There is an answer that is provided in the agreement. That answer may not be the best answer for certain industries, and certainly it is not the case that we are trying to limit this to an issue of Japan. However, we are dealing with U.S. implementing law. And my experience is that U.S. implementing law is usually ahead of the rest of the world in terms of both its objectivity, its openness, and ultimately, its fairness.

Chairman GIBBONS. Well, let me kind of—let's do this informally, and I ask all of you to pitch in.

Is the GATT an appropriate agreement for the United States? Looking at it both from the angle of the fact that we are exporters as well as we have domestic industry here, is the GATT adequate?

Mr. GARFINKEL. Talking about this specific provision?

Chairman GIBBONS. Yes.

Mr. GARFINKEL. Gary.

Mr. HORLICK. The specific provision on startup was a compromise. I give Eric a lot of the credit and blame for it in the negotiations. It is hardly perfect. We are going to have to live with it. As Terry says, it is a rule.

I would say that defining startup in many of these big-ticket items, you are in startup and you are exporting. And, yes, U.S. legislation is the leader, the famous Russell-Long amendment. The EC complained for a couple of years and then they found out they could use it to limit our chemical imports into Europe.

When Florida Steel got hit with the dumping case in Mexico, one of the ECAT members told me that they started shipping the same product to Mexico; and so that ECAT company went to complain to the Mexican Government and said, we were never investigated. The Mexicans said, sorry, we are just applying U.S. rules.

So I take the imitation by other countries seriously.

Mr. GARFINKEL. I think there is a big question that has to be defined by the committee, and that is, how do you define this period and what kind of lengths of time are we talking about? I think Gary has a broader vision of startup than perhaps Terry might have.

If you get into the question of whether or not the startup period should include that period where you are trying to increase your yields, and your costs are dropping as you are pushing volume out, you could be talking about a very long period of time; and some people might allege that what you are really talking about is



dumping as you move down the yield curve in order to get price and volume improvements.

Mr. HORLICK. Let me put it in real terms.

The Saturn is widely praised; General Motors did it the right way. They started their plant at very low production rates, because they wanted to make sure that every car out of there was high quality, and GM's strategy worked. The Saturn is a very successful product, because they established a quality image from day one.

GM didn't want to start running at 60 cars an hour, or whatever. They started very slow.

What that means in dumping law is, GM's average unit cost was very high. Until you get to full production volume, your average cost in accounting terms is high.

Now, GM was doing the right thing in business terms. It was widely recognized as doing the right thing, not only by the business schools, but by the consumers. And it just doesn't make sense to me to say, well, let's cut the startup off at 3 months artificially, GM had decided the right way to start up its Saturn plant was 2 years. And the market agreed with GM.

Chairman GIBBONS. OK.

**STATEMENT OF PAUL C. ROSENTHAL, PARTNER, COLLIER,  
SHANNON, RILL & SCOTT, WASHINGTON, D.C.**

Mr. ROSENTHAL. To go directly to your question, though, Mr. Gibbons, can the United States implement this appropriately, can other countries implement it appropriately?

Chairman GIBBONS. Yes.

Mr. ROSENTHAL. The answer is yes, but recognize, appropriately, that the agreement itself provides some latitude for each administering authority. The United States, I think, will do the best it can, and it must have some flexibility here.

I think the bogeyman that is raised, so-called "mirror legislation,"—that if the United States imposes some kind of draconian approach, some other country will necessarily do the same—is just that, a bogeyman. Other countries are going to implement whatever flexibility they have that they believe is in their best interests.

We have no control over whether Colombia or some other country decides to take a more restrictive view of the language concerning startup than the United States takes. We have to take what we feel is a rational approach to deal with the legitimate problems that Gary raises.

[The prepared statement follows:]

**STATEMENT OF PAUL C. ROSENTHAL  
COLLIER, SHANNON, RILL & SCOTT**

Good morning. I appreciate the opportunity to appear before the Subcommittee today. Over the years, my firm and I have represented a wide variety of domestic industries, including the television, advanced display, specialty steel, copper and brass, grey and ductile iron foundry, forklift truck, machine tool, shipbuilding, bicycle, footwear, leather and drafting machine industries. In the agricultural sector, we have represented the salmon, pasta, pork, poultry and juice industries. Just last week, we filed a case on behalf of the U.S. garlic industry. Attached is a list of some of our current clients who feel strongly about maintaining strong U.S. trade laws. I think it is fair to say we have represented more different domestic industries in unfair trade cases than any other firm. While we most often represent domestic petitioners in these cases, we have represented respondents as well, including domestic processors and importers of orange juice. In addition, we represent U.S. manufacturers who are the subjects of dumping cases in foreign countries, such as Mexico and Colombia.

Mr. Chairman and members of the Subcommittee, I recite this background because although I have been invited to testify as a representative of domestic industries who are users of the unfair trade laws, I also have the perspective of representing industries who defend themselves under these laws in the United States and abroad.

The format of the hearing today does not lend itself to lengthy statements; for that, we can all be glad. In accordance with my discussions with your staff, I will submit written comments on particular legislative provisions at a later date. As it considers legislation to implement the Uruguay Round Agreement, I ask the Subcommittee to bear in mind a few fundamental points.

**Strong Unfair Trade Laws Are A Necessary  
Element Of An Open Trading System**

Since the inception of the GATT, it has been the position of the United States that the U.S. would lower its tariff and non-tariff barriers, but the U.S. had to maintain the right and the ability to counteract unfair trade -- be it through dumping, subsidies or some other pernicious practice. Thus, since World War II, the *quid pro quo* has been that the U.S. market would be open to foreign trade so long as it was fair trade. Obviously, there have been exceptions to this approach, but nevertheless this has been the general direction of U.S. policy. To the extent that the U.S. commitment to strong, useable unfair trade laws is undermined, it will have negative consequences for continued lowering of trade barriers.

**Strong Unfair Trade Laws Are Necessary For  
Maintenance Of Jobs In Industry And Agriculture**

The Uruguay Round, to no one's surprise, will not result in elimination of all trade barriers. Countries will continue to be able to subsidize industries and agricultural sectors; companies will still be able to use protected home markets to dump, or dig deep into their pockets to drive competitors out of strategic industries. Indeed, as military tensions ease in the aftermath of the cold war, economic competition will intensify. U.S. farmers and workers will need more than ever the ability to rely on a fair process to obtain relief from unfair, injurious trade.

The Congress needs such laws as well. As a practical, political matter, members of Congress are not in a position to resolve trade disputes brought to you by your constituents. You need to be able to direct your constituents to agencies -- to a process -- that will address their concerns. That does not mean that one side or another of a dispute should always win. But, there needs to be a fair process that provides timely, effective relief.

**Congress' Goal Should Be The Strongest  
Trade Laws Consistent With The GATT**

Much of the U.S. negotiating efforts during the Uruguay Round were directed toward preventing a weakening of the dumping and subsidies codes, and hence, a required weakening of U.S. law. Little discussed during the negotiations were the weaknesses in

current U.S. law. Now that the Uruguay Round is over, Congress should concern itself not just with minimizing the damage done to U.S. law as a result of the Round, but with ways to strengthen the law consistent with the GATT. Indeed, despite the weakening of certain provisions, the Uruguay Round does provide opportunities for the U.S. Congress to strengthen the law -- or at least correct certain U.S. administrative practices that make our laws less effective than they need to be.

There are those who will counsel against making our laws strong. They will argue that if we make our laws strong, other countries will be tempted to do the same. Allegedly, this will hurt U.S. exporters. This fabricated fear of so-called "mirror legislation" is unfounded.

First, U.S. laws and the administration of them are fair -- and undoubtedly will remain fair after the Subcommittee completes its work. U.S. exporters would be fortunate if other countries adopted the substance and process of our laws.

Second, no one should be deluded that other countries will follow the path of the United States. If the United States adopts weak laws, it would be folly to believe that other countries will follow suit. Other sovereign nations will do what is in their own best interests; if they believe that those interests require strong domestic laws on unfair trade, they will pursue them -- no matter what the U.S. Congress includes in implementing legislation.

### **The Implementing Legislation Should Provide Strong Remedies For U.S. Exporters**

Although the focus of my testimony today is the U.S. antidumping and countervailing duty laws, I am very concerned about maintaining the ability of U.S. exporters to challenge unfair trade practices in foreign markets. Congress should ensure that section 301 of the Trade Act of 1974 remains an effective remedy. United States Trade Representative Mickey Kantor has said that the Uruguay Round did not undermine section 301, and that the U.S. still has the right and ability to act unilaterally to address trade restrictive activities that are not governed by GATT Codes. My suggestion to the Subcommittee is two-fold: first, ensure that section 301 is indeed an effective vehicle for pursuing remedies through the GATT dispute settlement process. That would include, among other things, providing for fuller industry representation and participation in GATT proceedings.

Second, the Congress should ensure that section 301 can be used effectively against a full range of non-GATT actionable practices that may nonetheless inhibit U.S. exports. Antitrust-type remedies to deal with closed foreign distribution systems is one possibility to consider.

In sum, I appreciate the opportunity to present my views. I look forward to working with the Subcommittee and your staff to help fashion effective and fair legislation.

Advanced Display Manufacturers Of America

Bicycle Manufacturers Association Of America, Inc.

Committee To Preserve American Color Television

Copper & Brass Fabricators Council

Footwear Industries Of America

Hyster Company

Leather Industries Of America

Municipal Castings Fair Trade Council

National Pasta Association

National Pork Producers Council

PC Strand Producers Coalition

Shipbuilders Council Of America

Specialty Steel Industry Of The United States

Specialty Tubing Group

Tanners' Countervailing Duty Coalition

Vemco Corporation

Verson Corporation



Mr. LEVIN. So what is the issue, Mr. Chairman? I mean, between you, what we put in the implementation language—how we change present law?

Mr. HORLICK. Actually, most of the GATT language tracks verbatim U.S. law, and as I said, the legislative history of that law is fairly clear. Commerce chooses to ignore it on occasion, and the CIT has reversed them three times on this language, but I am not sure you need to change much, to be honest.

Mr. GARFINKEL. I think the only question is how you want to define this, if you want to define it in legislation or whether you want to leave this for administrative practice.

But there is going to be a certain amount of latitude afforded the administrators as to how long this period is going to be on a case-by-case basis and what to include in that adjustment. It will make a big difference in a dumping case as to whether or not you allow for startup on the theory that it is going to take some time for a producer to earn back its costs, or whether you tighten it up and say, no, we are going to define that in very limited terms, and you are only going to be able to allow for startup over a short period of time.

**STATEMENT OF PETER O. SUCHMAN, TRADE ADVISOR, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, AND PARTNER, POWELL, GOLDSTEIN, FRASER AND MURPHY, WASHINGTON, D.C.**

Mr. SUCHMAN. Mr. Levin, I think the short answer to your question is, I don't believe there needs to be any amendment to U.S. law. I think that the Commerce Department has discretion, has had discretion, has used it sometimes the right way, sometimes not the right way; and the question is how they are going to implement it in the future. When they get in trouble is when they ignore commercial reality.

I think that is really what Gary was saying, that you really need to look at company and industry standards; and if you stick to that, you are probably not going to get into trouble and you are probably going to be in accord with the agreement.

So I don't think this is a situation where there needs to be an amendment to U.S. law.

[The prepared statement follows:]

SUMMARY OF TESTIMONY OF  
 PETER O. SUCHMAN  
 ON BEHALF OF  
 AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS (AAEI)  
 COMMITTEE ON WAYS AND MEANS  
 SUBCOMMITTEE ON TRADE  
 FEBRUARY 8, 1994

INTRODUCTION

AAEI supports the Uruguay Round agreements. They will inject renewed vitality into the multilateral trading system by cutting worldwide tariffs by an average of 40 percent, bringing agriculture, services, intellectual property, and textile and apparel trade within the scope of multilateral trade rules, and providing greater discipline over trade-restrictive trade remedy procedures and over dispute settlement procedures.

The Uruguay Round implementing legislation is a jobs bill. By 2005, the U.S. can expect 2 million additional jobs as a result of trade liberalization.

DISPUTE RESOLUTION AND THE WTO: The WTO represents a significant advance in the reform of GATT, offering a structure for the coordination of trade in goods, services and intellectual property, and improving dispute resolution by making it automatic, transparent and binding.

TARIFF REDUCTIONS: The reduction or elimination of tariffs on a broad range of products as a result of the market access negotiations is an important accomplishment. AAEI is hopeful that the continued market access negotiations will result in additional tariff cuts.

RULES OF ORIGIN: AAEI fully supports a multilateral effort to develop, within 3 years, harmonized rules for determining the origin of goods, and intends to contribute to that effort. AAEI urges that no changes be made in U.S. law and practice until the multilateral, harmonized rules are developed.

THE TEXTILES AGREEMENT: The textiles agreement guarantees the complete phase-out of MFA restraints over a 10 year period. To ensure that the transition to free trade in this sector provides all parties with the ability to plan their businesses and that the liberalization objective is met, Congress should establish transparent procedures to determine which quotas should be eliminated during each stage of the phase-out and the need for the application of transition safeguard measures.

ANTIDUMPING CODE: As the world's leading exporting nation, the U.S. has a strong interest in the adoption and universal implementation of an effective and even-handed antidumping Code. Now that the U.S. has negotiated a Code that incorporates many of the changes sought by U.S. industry, the U.S. implementing legislation should ensure that U.S. antidumping law is interpreted and administered in a manner consistent with the spirit and letter of that Code. In particular, the Code's standing rules will require new procedures for making appropriate inquiries, for an increased time period for making the standing determination, and for terminating an investigation should it be determined that the necessary industry support is not present. The new de minimis standard must be included in the law or legislative history. And Congress should act now to deal with the backlog of 300 antidumping orders that will have to be reviewed under the Code's 5 year grace period for pre-existing orders.

Good morning, Mr. Chairman and Members of the Trade Subcommittee. My name is Peter Suchman. I am a partner in the law firm of Powell, Goldstein, Frazer & Murphy, and Trade Advisor to the American Association of Exporters and Importers (AAEI), and was formerly Deputy Assistant Secretary of the Treasury for Tariff Affairs. AAEI is a national organization of approximately 1,200 U.S. firms, active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. The Association's members also include service industries such as customs brokers, freight forwarders, banks, attorneys, and insurance carriers.

As the largest member organization in the country concerned solely with international commerce, we are particularly appreciative of this opportunity to appear before this subcommittee to discuss the results of the multilateral trade negotiations.

You may recall, we appeared before this subcommittee on November 4 to urge the prompt completion of the Uruguay Round. AAEI is delighted to now submit to this subcommittee its views on the results of the Round and its implementation. As you know, Mr. Chairman, conclusion of this Round was a long time in coming. The President's team of trade negotiators has done an admirable job in concluding this agreement and they and their predecessors in the Bush and Reagan Administrations deserve our appreciation.

While clearly none of the parties to the Agreements achieved everything it wanted from the Round, this is true both for the United States and for our trading partners, but give and take is the simple reality of trade negotiations. Importantly, adoption of the Uruguay Round agreements by 117 nations injects renewed vitality into the multilateral trading system at a time when grumblings of beggar-thy-neighbor policies and bilateralism were causing concern about the continued commitment of the major trading nations to a rules-oriented system.

The Uruguay Round agreements are expected to cut worldwide tariffs by an average of 40 percent and will bring agriculture, services, intellectual property, and textiles and apparel within the scope of multilateral trade rules. The goals for the Uruguay Round were ambitious, but the pay-off, hopefully, will be well-worth the seven year wait. As we noted in our testimony before this subcommittee in November, the World Bank recently estimated that the Uruguay Round would generate a gain of over \$200 billion in world income annually in the agricultural and manufacturing sectors alone by the year 2002, by which time the full impact of the Round will be in effect. If all trade distortions and tariffs were completely removed in all regions, the study estimates total gains in the year 2002 would measure about \$450 billion. And many say the World Bank underestimated!

Economists tell us that freer trade increases global welfare, and so the United States, as the world's most important player in the global economy, is sure to benefit in a major way. But it does not take an economist to know that improvements in intellectual property protection, creation and expansion of rules for insurance, banking, accounting and other services, liberalization of global trade in textiles and apparel, and discipline for agricultural export subsidies and over the use of trade-restrictive trade remedy procedures by importing countries will benefit the United States today and into the future.

And the Uruguay Round is a jobs bill. By 2005, the U.S. can expect 2 million additional jobs as a result of trade liberalization under the Uruguay Round, according to a study commissioned by the USTR last year.

While AAEI supports the Uruguay Round Agreements, our enthusiasm is tempered by long experience with the political power and resilience of special interests which will undoubtedly attempt to use the legislative process for implementing the Round's agreements to minimize the liberalizing effects of the Round, and especially to distort for their own advantage the trade remedy laws of the United States. AAEI urges this subcommittee and the Congress to resist these efforts and to insure that the implementing legislation is consistent with both the spirit and the letter of the agreements.



I would now like to turn to those specific topics of special concern to the members of AAEI.

### Dispute Resolution and the WTO

The World Trade Organization (WTO) represents a significant advance in the reform of the GATT. The Uruguay Round final provisions on dispute settlement and the WTO represent a major victory for U.S. negotiators, who had rejected the WTO concept as proposed early in the Round by Canada and the EC. The U.S. held out on the WTO as a means to ensure that its own trade laws, including Section 301, would not be unreasonably limited. And it worked! The WTO strikes a reasonable balance between the need to increase the effectiveness of the GATT panel system and the interests of the United States as the world's largest trading country.

AAEI supports the results reached on the WTO and dispute settlement in the Uruguay Round. The WTO will -- for the first time -- offer a structure for the coordination of trade in goods, services and intellectual property. Dispute resolution will be significantly improved by becoming automatic, transparent and binding. The most important change incorporated into the WTO procedures is the automatic adoption of both panel reports and authorization to retaliate, unless there is a consensus to reject the panel report or retaliation authorization. No longer can a single vote of a Contracting Party prevent the adoption of a report or the authorization of retaliation. The WTO also guarantees the right to a panel, creates mandatory time limits to expedite the process, provides for appellate review of matters of law, mandates strict surveillance of a country's efforts to conform with panel reports, and establishes expeditious arbitration procedures.

Dispute settlement under the WTO will allow for "cross-retaliation" among sectors so that barriers on services, for example, can be addressed by raising tariffs on goods. U.S. concerns about delay in the panel process have been answered and a strong presumption in favor of adoption of panel reports will bring more discipline to the world trading system. Likewise, the presumption that authorization to retaliate will be granted means that now when a country refuses to comply with the WTO, retaliation can be done with the full authority of the WTO and without danger of counter-retaliation as was true under GATT.

The United States, in pressing for freer trade and as the world's leading exporting nation, has historically been a plaintiff at the GATT more often than a defendant. It is the United States that therefore has the greatest interest in an effective and expeditious GATT dispute settlement mechanism. We should be particularly pleased at the result of the Uruguay Round because the United States won inclusion of many of the provisions increasing the effectiveness of the dispute resolution process that it had suggested. Now that we have advanced our objectives in the negotiations, the Congress must ensure that U.S. trade laws are drafted and implemented in a manner consistent with our obligations under the WTO, and so as not to undermine the significant progress achieved in the creation of an international referee for trade disputes.

Most particularly, we must ensure that where a dispute with a trading partner concerns subjects covered by the GATT or the various agreements negotiated under its aegis, and is therefore appropriate for settlement under WTO, that in fact the U.S. submits to WTO settlement procedures and avoids the temptation to engage in unauthorized unilateral action.. Section 301 of the Trade Act of 1974 must be critically re-examined. At a minimum, legislative history should be added, clearly setting forth the intent of Congress that trade restrictive actions under this provision of law may only be taken in a manner which is compatible with U.S. obligations under international agreement and in conformity with WTO dispute settlement procedures.

The United States has always been a leader in ensuring a fair and open trading system. The WTO and the newly agreed upon dispute settlement rules will serve those interests. It is therefore incumbent upon this body to continue its leadership by drafting

legislation that supports the advances made in the Uruguay Round, particularly those in the area of dispute resolution.

### **Tariff Reductions**

AAEI supports the tariff reductions achieved in the market access agreement and is hopeful that the continued negotiations with our trading partners will result in even more duty reductions and zero for zero tariff agreements.

The reduction or elimination of tariffs on a broad range of consumer products, including toys, furniture, certain footwear, distilled spirits, beer, and ceramics, as a result of the Uruguay Round market access negotiations is an important accomplishment. AAEI is also pleased by Administration statements that it will include in the package of immediate duty eliminations and reductions those products that were the subject of noncontroversial duty suspensions in place until January 1, 1993 and those products that have been subject of noncontroversial duty suspension legislation introduced in Congress.

### **Rules of Origin**

The U.S. has agreed to the establishment of a GATT Committee on Rules of Origin and a Customs Cooperation Council Technical Committee on Rules of Origin. The Agreement calls for these working groups to develop, within 3 years, a multilateral and harmonized set of rules for determining the origin of goods. The product of these working groups will be annexed as an integral part of the Agreement. AAEI fully supports this multilateral effort to afford predictability for U.S. exporters, importers, and manufacturers in origin determinations.

Notwithstanding this commitment to the multilateral development of rules of origin, the U.S. has, within weeks of inking the Agreement, unilaterally proposed new rules changing the way origin determinations would be made. AAEI believes that this initiative by U.S. Customs is ill-advised and counter-productive - it undermines the effort to develop multilateral rules, has unknown practical application, and would require the trade community to learn and adjust to a new set of rules which may well be changed in a few years.

The proposed new set of origin rules parallels the NAFTA marking rules that the U.S. has adopted on an interim basis. AAEI is already hearing from its members about problems and complications with the NAFTA marking rules. We suggest that the more prudent and efficient approach, from the perspectives of both the government and the trade community, is to use the NAFTA marking rules as the "laboratory" to test the workability of the concept for broader and universal application. The U.S. would then have the chance to adapt, change, modify or refine the set of rules before they are implemented. This more prudent course would minimize the inevitable dislocations and disruptions to existing trading patterns that are based on the current, longstanding rules of origin.

AAEI intends to contribute to the efforts of the GATT and CCC committees in developing worldwide rules of origin that are transparent, objective, and predictable. Until such time as these committees complete their work, it makes no sense for the U.S. to go off on its own and change its rules of origin. The current rules, based on the concept of substantial transformation as developed by a wealth of precedential rulings and cases over many decades, are at least well-known and familiar. AAEI strongly urges that no changes be made in U.S. law and practice until the multilateral, harmonized rules are developed.

### **The Textiles Agreement**

The Uruguay Round textiles agreement is a significant accomplishment, guaranteeing the complete phase-out of the Multifiber Arrangement restraints over a 10-year period. AAEI urges Congress to establish transparent procedures to determine which quotas will be eliminated during each stage of the phase-out and the need for transition safeguard measures. Such procedures will be essential to ensure that the transition to free trade in textiles and

apparel provides both domestic producers and U.S. importers with the ability to plan their businesses, and that the liberalization objective is met.

The agreement provides for a 10-year phase out of restraints established under the Multifiber Arrangement (MFA) and for reducing tariffs on textile and apparel products by an average of 12 percent over 10 years. These represent major steps toward bringing textile trade under normal trading rules, although this industry still retains greater protection than any other industrial sector.

Congress, however, must insure that this agreement is implemented properly. Unless the spirit of liberalization is included in the procedures necessary to implement the agreement, the domestic industry will not take the steps necessary to compete with freely-traded imports and most assuredly will come back to Congress later for renewed protection. This is especially significant since most trade will not be liberalized until the end of the 10 year phase-out period. For that reason, AAEI makes the following recommendations:

First, the agreement instructs each importing country to determine which products it will integrate into the WTO during each stage of the phase-out. The only instructions provided are that products must be chosen from each of four groups (tops and yarns; fabrics; made-up textile products; and clothing). It is inevitable that the domestic industry will seek to have the phase-out for the most sensitive products (particularly, clothing) postponed until the end of the 10 year period. Deferring the inevitable may create tremendous pressures later on for continued protection. Some of that pressure could be alleviated by requiring that the phase-out schedule for all products be determined up front. This is an idea that has been presented by Industry Sector Advisory Committee #17. Under that proposal, which AAEI endorses, an independent body, such as the U.S. International Trade Commission, would be instructed to hold public hearings and make a recommendation regarding which products should be included within each stage of the phase-out program. Such a proceeding would allow all interested parties to participate and provide all with notice as to which products are going to be liberalized when.

We note that because the product phase-out determinations could mean that only some products within a particular textile category number are moved out of MFA-type disciplines and into GATT disciplines in a particular stage, Congress should act to ensure that these phase-outs do not result in the tightening of existing quotas. That would happen if the category quotas were allowed to be reduced each time to reflect the movement of trade into GATT rules. Instead, the implementing legislation or the legislative history should include a statement of Congress' intention that category quotas not be reduced by the quantity that is moved into GATT disciplines.

Second, AAEI notes that the transition safeguard procedures provided for under the Uruguay Round textiles agreement which are substantially different than the procedures currently in place for the establishment of country-specific quotas. Under the MFA, the Committee for the Implementation of Textile Agreements (CITA) makes a determination that imports of a particular category of products from a particular country are causing market disruption or threatening to cause market disruption. It then seeks to negotiate a quota with the country whose exports are at issue, and if no agreement is reached, unilaterally imposes a quota under a formula established under the MFA.

Under the Uruguay Round agreement, the standard for seeking a restraint is "serious damage," and it would apply globally, to all products in a category that are not already subject to restraints under a bilateral agreement. Given the substantially broader application of the transition safeguard mechanism and the different standard that will apply, AAEI urges that the Committee legislate new procedures for transition safeguard measures. CITA's current *modus operandi* is to make these decisions in secret inter-agency meetings relying upon Census Bureau data that is not even yet publicly available. CITA then contacts the foreign government before advising U.S. companies of the contemplated restraint. These procedures have always been unfair, but the continuation of such procedures under a system that allows even broader application of restraints is totally unacceptable and hypocritical in



light of the transparency and due process demands the U.S. is making upon its trading partners.

AAEI proposes a procedure that would be substantially more transparent, allowing suppliers, importers, and domestic industry to present evidence and arguments in an open forum. This could be accomplished by requiring that the independent U.S. International Trade Commission, which has substantial experience in handling these types of matters, take on this responsibility. If the ITC makes a positive determination on the issue of damage, CITA could then have responsibility for negotiating any necessary quotas.

Third, U.S. negotiators have indicated an intention not to apply the Uruguay Round textile agreement to non-GATT members, including China and Taiwan, among others. AAEI is extremely hopeful that both countries will accede to the WTO within the next few years. Upon their accession, these suppliers should be provided the full benefits of membership, including liberalization of textiles trade. AAEI will strenuously oppose any provision in the implementing legislation that would appear to prevent subsequent signatories to the agreement from receiving equal benefits upon their accession.

Finally, AAEI was pleased to see that under the final Uruguay Round textile agreement, an importing country, such as the United States, cannot unilaterally determine that it will deny increases in quota growth to countries it views as failing to have taken sufficient steps to open their markets to foreign products. Instead, the U.S. will be allowed to ask the WTO's Council on Trade In Goods to decide if the balance of rights and obligations has been upset by a country failing to open its market. If that body makes a positive determination, the Dispute Settlement Body would then be empowered to authorize "adjustments to the annual growth rate of quotas." AAEI strongly supports market opening initiatives, which will help U.S. companies expand sales abroad, and believes that the U.S. should not hesitate to make appropriate use of this mechanism. Under no circumstances, however, should U.S. implementing legislation permit the U.S. to unilaterally determine that it is going to deny a supplier access to the U.S. market or an increase in quota growth. For the reasons previously discussed, it is imperative that the United States not be perceived as avoiding or minimizing the disciplines of the WTO dispute settlement procedures.

### **Antidumping**

As the world's leading exporting nation, the United States has a very strong interest in the adoption and universal implementation of an effective and even-handed GATT antidumping Code. In recent years, countries such as Korea and Mexico have been increasingly active in using their antidumping procedures to protect their domestic industries, frequently at the expense of American companies. In order to ensure fair treatment of U.S. exporters in these and other foreign countries and to insure that our national legislation is not used for overtly protectionist purposes, the U.S. must take the lead in fully and fairly implementing the new GATT antidumping Code and in giving full effect to the WTO dispute settlement mechanism interpretations of our international obligations.

This is particularly important in the review, under WTO procedures, of domestic antidumping determinations. The new Code contains, in Article 17, comprehensive provisions for panel reviews and dispute resolutions. The standard of review contained therein provides full protection to U.S. industries who bring antidumping cases against foreign importers. Under the Code, a panel may not substitute its own conclusions for that of the domestic agency -- a panel may not disturb antidumping determinations that are found to be unbiased and objective in their factual findings and that are based on a legally permissible interpretation of the provisions of the Code. This standard of review is similar to that presently used by the U.S. courts to review the Department of Commerce's and the International Trade Commission's antidumping determinations, and provides full protection to the interests of U.S. industries.

In the past, the Department of Commerce, the ITC and the federal courts have, unfortunately, been reluctant to pay deference to the GATT antidumping Code when

interpreting U.S. law. Despite a clear statement in the Trade Agreements Act of 1979 that its purpose was to implement Tokyo Round agreements, including the GATT Code, the U.S. courts have frequently allowed the Department of Commerce in administering the statute to interpret ambiguous provisions of U.S. law in a manner contrary to the Code. For example, in the Suramerica case,¹⁷ the Federal Circuit expressly refused to follow a GATT panel ruling on the standing provisions of the Code, and instead upheld as a reasonable exercise of the agency's discretion Commerce procedures which were clearly contrary to the Code.

This reluctance to give full effect to the Code in U.S. law is counterproductive. The United States is the world's leading exporting nation and in most years is the number one target of antidumping actions around the world. Thus, the lack of international discipline over antidumping procedures has exposed U.S. export industries to arbitrary and biased trade restrictive proceedings under the antidumping laws of foreign countries.

Now that the United States has negotiated a new GATT Antidumping Code that incorporates many of the changes sought by U.S. industry, it is time to ensure that this Code gains widespread and whole-hearted acceptance. Congress must make it clear, preferably in the statutory language and also in the legislative history, that the U.S. antidumping law is to be interpreted and administered in a manner consistent with the spirit and the letter of the antidumping Code, unless the statute is clearly contrary to Code provisions and is identified in the legislative history as being not in conformity. Congress should specify that in all other instances the administering authorities and reviewing courts must favor an interpretation of the U.S. law that is consistent with the Code and with interpretations of the Code by appropriate bodies of the GATT and WTO.

Such a strong endorsement of the Code and the international dispute settlement mechanism will protect U.S. exporters from foreign protectionism and greatly enhance international discipline over unilateral attempts to minimize the effectiveness of the Uruguay Round agreement.

The new Code incorporates many new provisions, a number of which were sought by U.S. industry. These should also be implemented fully by Congress, without changes. The major new provisions are as follows:

**Standing.** In the past, the Department of Commerce (DOC) has for the most part ignored the requirement of the Code and U.S. law that petitions be filed "on behalf" of the domestic industry. In effect, the DOC has required respondents to demonstrate that petitioners do not represent the industry. The new Agreement requires that a major portion of the industry support the petition. A major portion is defined as producers accounting for at least 25 percent of domestic production in absolute terms, and 50 percent of producers expressing either support or opposition. Implementation will require procedures for making appropriate inquiries, and an increased period of time after receipt of a petition and prior to initiation to make the necessary determinations, as well as provisions for terminating an initiated investigation should it be determined that the necessary industry support is not present.

**De minimis Margins.** The present interpretation of U.S. law is that margins of dumping are de minimis if below 0.5 percent. The new agreement sets 2 percent as the standard and requires termination of investigations when margins are below this level. The statute, or alternatively the legislative history, should establish 2 percent as the standard for negative LTFV determinations, and zero estimated duty deposit rates, as the precondition for revocation under U.S. procedures.

**Calculation of Constructed Value.** The implementing legislation must eliminate the current mandatory minimum for general expenses and profit for the calculation of constructed

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¹⁷ Suramerica De Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 667 (Fed. Cir. 1992).

value under U.S. law, and apply the Code requirement that these amounts be based on actual data.

**Exchange Rates.** U.S. law will need to be amended to reflect the provision in the new Agreement which provides that exporters shall have at least 60 days following sustained movements in exchange rates to adjust export prices.

**Weighted Average Prices.** The Agreement provides that normally weighted average foreign market value will be compared to weighted average U.S. prices. While current U.S. law permits this method for calculating margins, the DOC has, with only minor exception, compared weighted average FMV with transaction specific U.S. prices. This is an inherently unfair calculation, almost guaranteed to find the existence of dumping even where none exists. While the Agreement provides an exception to permit the current preferred DOC methodology under limited circumstances, the legislative history should express the intent of Congress that this exception is to be construed very narrowly and that weighted average to weighted average price comparisons are to be the rule.

**New Shippers.** The Agreement will require amendment of U.S. law to provide for an expedited administrative review for "new shippers" of a product that is subject to an antidumping order.

**Automatic Termination of Orders.** The statute must be amended to provide that AD orders shall be terminated five years from the date of the order, unless there is a determination by the appropriate authorities that termination is likely to result in future dumping and injury to the domestic industry. This amendment will require the establishment of appropriate procedures for both the DOC and ITC in order to facilitate the necessary determinations in a timely manner. It will be important that the basis for making these determinations mirror, as closely as possible, the initial findings of LTFV sales and material injury. Under current law and practice both the DOC and International Trade Commission (ITC) have made revocation of AD orders almost impossible. As a result, DOC struggles continuously with a tremendous backlog of administrative reviews, some based on initial determinations 20 or more years old. Congress should clearly state its intention that this "sunset" provision become a meaningful method of eliminating orders which are based on out-of-date analyses, and that the agencies, especially the ITC, make a careful and reasoned examination of the continued need for the order.

The provision will create some difficult transition problems since we understand that there are some 300 outstanding AD and countervailing duty (CVD) orders which will have to be reviewed in the one year period prior to the 5th anniversary of the effective date of the Agreement. It is unfortunate that this 5 year grace period for pre-existing orders was established, and the commitment to it should be re-examined. A more rational approach would be to begin immediately to review the oldest pre-existing orders, and to complete all such reviews by the end of the 5 year period. However, if the grace period is to remain, Congress must make clear to the ITC that its reviews must be conducted as diligently as any other agency investigation, regardless of the burden on the agency.

Finally, Congress must be alert to efforts, already underway, to amend the U.S. antidumping law in ways not required by the new Agreement so as to offset and even reverse any liberalizing results of the Uruguay Round. Special interests are attempting to take advantage of the admitted ambiguity of the Agreement in many areas, in order to further distort U.S. antidumping procedures and make them even more biased against imports and more protectionist than they already are.

Flying under the false flag of creating a "level playing field," these interests will try to create in the trade remedy laws, and particularly the antidumping law, an impenetrable barrier to global competition. The specific proposals that we are aware of are too numerous to address individually. Some have been resurrected from previous failed efforts to change the law, some are new variations on an old theme. Their objective is to rewrite the definition of "dumping" and then cry loudly about "unfair trade." We trust that this



subcommittee and the Congress as a whole will resist these efforts, remembering that in the trade liberalization process, as we sow so shall we reap.

### **Conclusion**

The completion of the Uruguay Round presents us with the opportunity to take a major step forward in the liberalization of International Commerce, a step which will greatly benefit the U.S. economy, our workers and our businesses. It is critical that the results of the implementing process reflect both the letter of the agreements reached, and their spirit. Attempts to use this process to undo the Round's historic market opening effects must be rejected both by the Administration and the Congress.

Thank you Mr. Chairman and members of the Trade Subcommittee for this opportunity to present the views of AAEL and its members.

Mr. STEWART. There is a concern that has been repeatedly expressed by the semiconductor industry that the committee should at least be aware of. And that is that the technical language that is in the footnote in the GATT suggests that you could be trapped if you are in a situation where both costs and prices are declining; that your period of investigation could be defined for, say, 6 months or 1 year, and your prices at that time may, in fact, all be below the costs in that time period. But this would kick you out so that your costs are in a later period which would be below prices.

Your prices may still be below the costs in that later period, yet you would come up with what they would view is an absurd result of prices that are profitable, when in fact they were losing money throughout the time period.

So, on the one hand, you may have the concern that you could have an industry—and there has never been a case in the United States or anywhere else on products where the startup legitimately would have been a multiple-year startup kind of situation.

But at the same time, you can have situations which are, I think, the practical concern where there have been cases here in the United States and in Europe dealing with products that are characterized by declining costs and price curves, and if implementing legislation doesn't maintain the discretion for the agency to be able to extend the period it looks at in those situations, you could get artificial, negative results which are not a reflection of the underlying cost and price models.

Chairman GIBBONS. Let's shift the issue to the other foot, though. If we give too much flexibility there, we are going to find people overseas—aren't we abusing our industries in these kind of cases?

Mr. ROSENTHAL. Flexibility is already provided by the GATT. If our legislation maintains that flexibility for U.S. administrators, it is not going to have any impact on what foreign administrators and their laws will do.

Chairman GIBBONS. OK.

Mr. GARFINKEL. Mr. Chairman, with your permission, I would like to move on to the next issue.

Chairman GIBBONS. All right.

Mrs. JOHNSON. Before you do, could I just—

Chairman GIBBONS. Yes, sure.

Mrs. JOHNSON. Let me just ask: I assume from your discussion that the wording now allows industry standards; and how does it resolve conflicts between our domestic government and our domestic industry as to what that standard is?

Mr. STEWART. As in many things in the GATT, it doesn't define it, and presumably that would be left to a matter of local law, with the opportunity for governments to challenge, if they felt that the construction wasn't a rational or unreasonable one.

Chairman GIBBONS. OK. Go ahead.

Mr. GARFINKEL. Now, moving back to our hypothetical, Mr. Chairman, after this dumping order is in place—and in this case, we have got a 20-percent margin now on both the first- and second-generation product—a group of U.S. computermakers come forward and claim that this dumping duty is having an adverse impact on their ability to integrate this particular product into a broad-scale

system that they are in the process of producing, that will create a global network through which these digital administrative assistants could be utilized.

They have approached the U.S. industry to produce the particular product in question. The U.S. industry does not yet have, on a full-scale production basis, precisely the product they are looking for; and the cost that the U.S. industry is quoting, if they were to begin production of this product, is three times that which the Japanese companies are willing to offer, this price, in the United States.

The U.S. computermakers come forward and suggest that the duty be waived temporarily, perhaps until such time as U.S. production is available; or the alternative, they suggest that they will move their production offshore because they don't want to lose this market to Japanese companies who are busy working on a competing system.

I would like to ask Mr. Horlick to begin the discussion.

Mr. HORLICK. I don't want to refight the flat panel case with Paul; we were on opposite sides of it. He was counsel for petitioner; I was counsel for IBM, which was a customer.

You will hear a lot of theology talked about short supply. The businesses I have run into—and this came up with several cases—the people you are talking with are not interested in theology. They call you up, they say, all right, there is a dumping case. I am supposed to buy the domestic product, so I call the guy up, and he won't sell it to me; he says he can't make it, I can't get it. And I have invoices from a guy who wanted one of the ball bearings—not invoices, sorry—quotes; and he was quoted, and the price for the ball bearing was high.

The high price wasn't the problem. The problem was the delivery date was 48 weeks later.

Well, my guy would go out of business if he had to wait 48 weeks. So it is not theology. It is very simple. These guys say, I can buy the foreign product, but why do I have to pay the foreigners a higher price than I have to—why give them a windfall, if I can't get it from the domestic industry?

Short supply would only occur where there is no domestic supply possible. And this worked in steel; Eric made it work. You have to ask the domestics if they can supply it. If they can supply half of it, you must buy half of it from them. If they can't supply it, and you have to buy the other half with payment of a dumping duty, that just rewards the foreign manufacturer.

Part of this was the experience under the semiconductor agreement, but the same has happened with antidumping orders. I wouldn't separate the two that easily.

In the high technology field, the people you would be paying off are your competitors. In the flat panel case, if laptop producers had stuck around in the United States and paid the 62 percent duty on flat panels, they would have been paying the duty to the same companies they compete with making laptop computers.

The other thing that would have happened—and we lost thousands of jobs in the United States, in North Carolina, California and Texas—if they had stayed here and paid that duty, Compaq,



IBM and Apple would not be leading the world in portable computers. They would be way back in the race.

Mr. GARFINKEL. Let me ask you, Gary. Let's assume that the product is available, but the price is indeed higher. Should—if there were such a provision, should the Commerce Department take into account the availability or the price, or should they not look at price at all?

Mr. HORLICK. Normally price is not an issue, and that was the case in the steel short supply system. There was a provision in the legislation, which this committee reported out and Congress passed, to look at aberrational prices, from the steel VRAs.

To give you one situation, without naming names, let's say you had a domestic producer—I don't want to pick on the steel people—domestic producer of wood, who also sells widgets which are made of wood. And the customer in the United States who buys imported wood finds himself with a dumping case against the wood. So he goes to the manufacturer of the wood and the widget and says, I want to buy some wood. And the guy who makes both of them says, fine, I will sell you the wood for one penny less than the widget.

This is known as a "squeeze." And the aberrational pricing provision was put in there by Congress, so the guy who makes both products can't squeeze a U.S. manufacturer who doesn't make the input.

Chairman GIBBONS. I could give you chapter and verse on that.

Mr. HORLICK. I bet you could. There must have been one or two of those—

Chairman GIBBONS. I had a number of those.

Mr. HORLICK. This is perceived more often outside Washington than inside, but I am told it happens.

Mr. GARFINKEL. Should price be a factor or not?

Mr. HORLICK. Price would be a factor in those unusual situations. But normally, as I say, under the steel short supply system, I don't think it was a factor more than once or twice in 5 years.

Mr. GARFINKEL. So your view would be that the duty would be waived as long as there was no supply, as long as the petitioning industry—in this case, it would be the computer industry—could demonstrate that they couldn't get the product.

But suppose the product coming off of the assembly line in the United States was twice as expensive as the Japanese product? Would that be aberrational, in your judgment?

Mr. HORLICK. "Aberrational" apparently is in the eye of the beholder, and I would think, by definition, must be an aberration. I wouldn't think it would be a very frequent case. Normally, and this was the experience with steel, it is simply a question of being able to get the product at all.

To go back to the ball bearing example I mentioned, for 48 weeks it was not available. Now, the key to understanding short supply, the most important part of it is the time limitation. You don't give someone an unlimited exemption from the dumping duties. I think in steel the exemptions were only valid for 6 months; you were allowed to buy supply for 6 months. The domestic producer can come back and say, 6 months later, I can supply all your needs, and then you have to buy from them.

Mr. GARFINKEL. Let me turn to Mr. Rosenthal.

Mr. ROSENTHAL. First, you have to realize that there is nothing in the GATT that covers this whatsoever. There is also nothing in current law. This is an issue that has been brought up by Gary and some of his clients who perceive a problem. Let me tell you why the solution is worse than the problem they perceive.

Under the theory that you would not impose duties as long as there is no supply, there would never be a supply in this situation. Under current law, there is a provision called "material retardation." That—

Chairman GIBBONS. What does that mean?

Mr. ROSENTHAL. If you are an industry that has not yet come into being fully and so can't be currently injured or threatened with injury, under current law you can show that you have been materially retarded from coming into being.

Under the short supply provision or the proposal that Mr. Horlick is proposing, there would be an elimination of current law on material retardation.

Let me give you some specifics. I don't want to refight the flat panel display case, but I can't resist responding to a couple of points. Gary talks about the inability to get displays in the United States. One of Mr. Levin's constituents is OIS, who was in the developmental stage of making displays. They had a Japanese competitor who was also in the developmental stage of making displays. A computer company went to both of them, got a great price from the Japanese competitor who wanted to buy its way into the market, and placed the business with the Japanese company. As a consequence, OIS was years from getting into the market.

IBM had a flat panel display manufacturing facility in the United States. They closed it down, invested in Japan in a joint venture with Toshiba, and then claimed there wasn't any supply in the United States. That, as you may well recognize, is a lot like the boy who kills his parents and throws himself on the mercy of the court because he is an orphan.

The problem with the proposed short supply provision is exactly what the ITC described in the flat panel case. The ITC said that "because of the substantial investment needed to enter a major market segment in direct competition with some of the largest Japanese corporations, the inability to attract capital"—and that is what the dumping problem does; it makes it hard to attract capital—"is particularly damaging to a producer of displays." "The lack of funds severely constrains research and development efforts which are critical to the progress in the industry. Domestic producers are caught in a cycle that denies them the opportunity to increase the production to a level that would result in economies of scale and increased expertise."

So, if you say you don't have to pay duties because of the shortage here; the foreign producer can continue to dump displays, and Compaq or IBM or Apple will have no incentive to go to the U.S. supplier. There would be no reason to source domestically because the costs—excuse me—because the prices won't be any higher and they won't be fairer. With a short supply provision, there is no way to attract the capital and investment so that that next generation comes onstream. You have locked the U.S. suppliers into a vicious cycle.



That is much different than having a steel quota situation. Steel quotas provided an absolute quantitative limitation. You may not get any more product in unless you get a short-supply exemption, because the product isn't made in the United States.

The dumping law doesn't restrict quantities. It says, you will have an unlimited supply of that product at a fair price. All you have to do is to stop dumping. Sell that product at a fair price, and you can supply Apple, IBM, Compaq with as many displays as you want. But as long as you continue supplying that display at an unfair price, you will never get the OISs and the other U.S. companies into that next generation of display. That is the problem that you have there.

Mr. GARFINKEL. Mr. Chairman, I think what both sides of this debate are pointing to is the fact that, on the one hand, if you waive the application of the duty, then you deny the domestic producer the incentive to make the investment and to, in effect, move into that business to create the product that is under demand.

On the other hand, I think Mr. Horlick points to the problem of the downstream users who are sitting there saying, look, the dumping duty is going to apply in the U.S. market. That makes the U.S. market a high-priced island for parts of this component. If we have to pay more for this product than other players around the world, then we can't be viable players in the world market.

It is not an easy question at all, and it is one that I think the committee will have to grapple with.

Gary, did you have another comment?

Mr. HORLICK. Just briefly, article 9.1 of the new GATT code expressly says that the decision whether to impose an antidumping duty is permissive. It expressly permits short supply. I won't go into the facts, or lack thereof, of what Paul was saying about flat panels. The person between us decided differently about Paul's allegations—that they were not the same flat panels, so I am sure Paul and Eric will want to duke that one out, again.

As I say, it is great to get wrapped up in the theology of saying the Japanese should have been charging us a fair price for flat panels. I wasn't representing the Japanese. I wasn't getting beat up by Japanese. I was getting beat up by businesspeople and U.S. companies that wanted to be No. 1 in the world—not just the United States, the world—in laptops.

And the beauty of it is, they are. They are beating the Japanese, and they wouldn't beat the Japanese if they had been paying that 62 percent duty on inputs they could not get domestically.

Now, just one more thing. Paul's client stated publicly in the Chicago Tribune, he could not make commercial volumes. So what Paul is saying is, we should have sat and waited. It was not a material retardation case, I might add; you didn't argue that. Paul is saying we should have sat around and waited 2 years while this company found out whether it could make flat panels in commercial volumes. You would have given away the hot market.

Mr. GARFINKEL. Gary, but let me—just to be fair, let's return, if you would, to the hypothetical I described, because it seems to perhaps make a stronger case.

If you have got a domestic industry that is capable of producing this product and you have evidence based on an investigation



under approved GATT and international rules that, in fact, the Japanese were dumping, why shouldn't you, in fact, impose the duty? Why should you, in effect, take the duty off and give the domestic industry no relief from the very practices that are preventing it from being a viable competitor in the world market?

I mean, I understand the position of your constituency—

Mr. HORLICK. Well, the issue is a—a short-supply provision would hardly be an automatic decision. It is something where Commerce is going to have to investigate, find out if, in fact, the U.S. supplier can supply them.

In Paul's hypothetical, we know the U.S. supplier will be able to fulfill all of the demand in the United States, and thus, people don't have to pay this windfall to find producers. Well, that is a question of facts, and as I say, Commerce in the steel VRAs went through this and they went through it and they ascertained that sometimes someone could supply it and sometimes someone couldn't. And I expect that is what is going to happen if you all legislate this.

Chairman GIBBONS. All right. Well, let me ask you the question. Is the GATT adequate so that we can do justice the best we can in this circumstance?

Mr. HORLICK. Clearly, the agreement expressly lets you do this. The GATT is not about to order you to impose a duty that would shoot your own downstream industry in the foot.

Mr. GARFINKEL. This is like a public-interest type analysis. I think you would have the authority; if you wanted to do this, it would be within the discretion of the administrators, if you, the Congress, gave the administrators the authority to do this.

Mr. STEWART. There is an important omission from the discussion so far, Mr. Chairman, that I would like to take 1 minute and try to address.

It is somewhat offensive to hear short supply raised in the context of a dumping law where the basic principle is price discrimination. Where price discrimination is eliminated, if an IBM or Compaq can't compete and they are paying the same price as their competitors, one has to wonder why should they win? Why should they be entitled to a false advantage, if you will, when a domestic supplier is faced with a false disadvantage?

There is only one situation, and it is an important situation, in which a downstream user could be disadvantaged, and that is where the foreign producer is selling in his home market below cost; all right? Then there is a real disadvantage to the purchaser. But the answer there ought not to be that you say to the supply industry in the United States, go out of business, because your foreign competitor is willing to sell below cost to major users, the answer should be to provide some form of remedy for that end user.

Let me give a kind of really outrageous twist to short supply, because one of the examples used was ball bearings. That was a case that we brought back in 1988. Part of the injury to the domestic company was a rapid collapse of facilities in which companies were forced to continue to produce a wide range of products in fewer facilities.

Anyone who has been in manufacturing knows if you have to produce more items in the same space, you are likely to lose the ability to meet on-time targets.

That industry, because of false price signals, contracted by 30 plants in \$1 billion of investment, is probably one of the few industries where there has been a subsequent study. The study was done by the Commerce Department in 1991-92, and what the report shows is that when you corrected the signals—see, the thing that short supply takes out is, it takes out the market signal to the domestic producer. But because there was no short supply provision, the market got the signal as to where prices should be, and so the jobs, the investment that had been taken out of the economy all came back into the economy, and all of the items that people were running around wringing their hands about not being available were now being produced in the United States, or the vast majority of them.

So the downside of something that sounds pretty reasonable, that echoes in terms of what has been done under a different situation, namely, quotas, where in fact you can have a shortage, is that you create an evil; namely, you take out the market signal for a company to say, gee, I could make money at these prices, if these prices are correct, I could go back into that business, which presumably is what this law is about.

Gary's real problem is that the Japanese, either through inclusion in refusing to come into the market and establish capacity here or by selling below cost abroad, there is not presently a remedy. That is a mistake.

For the last 2 years, I have urged the Congress to fix that problem, so that his clients are not disadvantaged. But the answer isn't to say, we should take two sides and decide one is a winner and one is a loser; that is not the correct answer. We each ought to be able to come in and get relief where we are facing a problem that is driving us out on false principles.

Mr. LEVIN. Mr. Chairman, could I just ask, what would the remedy be?

Mr. GARFINKEL. Under your proposal.

Mr. STEWART. The remedy is twofold. You have a downstream monitoring provision in the United States and you have a 301 remedy abroad. There will be significant question as to whether you can do those things under the present GATT.

Mr. LEVIN. Right. So—Mr. Chairman, so we are clear, the suggestion—this is an important, interesting issue, and somewhat significant. So some of you are urging, in the implementation process, there be a remedy, and others are suggesting not?

Mr. GARFINKEL. Right. And Mr. Stewart has actually a third option, which he has suggested that we look at the downstream product, the product that incorporates the allegedly dumped product.

Mr. LEVIN. But it isn't so clear what remedy we can take when companies in other countries refuse to supply.

Mr. GARFINKEL. Well, we are not talking about that situation, we are talking about a case where producers in the United States aren't able to meet the demands of downstream U.S. industry.

Mr. HORLICK. Terry's hypothesis is that they refuse to do so. The fact is, they are perfectly willing—the Japanese or any other for-

eign producer would be perfectly willing to charge a price twice as high or three times as high to the United States. The issue is, why are we giving the money to them and taking it out of our manufacturer's pockets?

I have heard some great theoretical constructs from the right hand side of the table here, but none of them make any business sense.

I repeat what I said. A time-limited license, 6 months while the domestic producer gets its production up, does not interfere with the market signals that Terry was talking about. The study he is talking about didn't discuss how a short-supply system worked, because there wasn't one.

I am not saying it is an unlimited license; I am just saying we want to keep the jobs here rather than ship them offshore.

His idea about monitoring the downstream product—remember what I said, 60 percent of our computer industry's revenues are offshore. How are you going to save those?

Paul, 2 minutes.

Mr. ROSENTHAL. I was just going to say on the last point, Congressman, the refusal to supply might be something more appropriately actionable or something to look at under section 301. It would not be an amendment under the dumping law.

But with respect to the dumping law, yes, you are correct in saying, the remedy Mr. Horlick has suggested would essentially, deny relief to component suppliers and effectively only allow assemblers of the finished product to benefit from the law.

What Terry is suggesting is, if you are going to have any remedy whatsoever here, it ought not to be a short supply provision, it ought to be that both the component suppliers and the downstream user of that component also have a remedy. So look toward the diversionary or the input dumping approach.

Mr. HORLICK. And what are you going to do for our export sales?

Mr. ROSENTHAL. For the export sales?

Mr. HORLICK. Yes.

Mr. STEWART. Action under 301.

Mr. HORLICK. Now, wait 1 minute. Are we going to force foreign countries also to charge the dumping duty on the component? Look, this is not something you can tell a vice president for purchasing of a U.S. manufacturer. It is just not realistic. This is theology.

Mr. SUCHMAN. I was going to say, I think it is important to get back to reality here and avoid all of this theology; and unfortunately, that is what happens when we talk about dumping, because we start using these hot-button words like "unfair" and "evil."

It is important to keep in mind that most practices that the U.S. law finds as dumping are normal, commercial practices. People price-discriminate in markets all the time; people sell below fully allocated costs all the time. And so the question that we are dealing with here is, what is in the national interests, what is in our economic interests?

And there are going to be occasions—I don't know if flat panels was the one or this hypothetical is the one, but there are going to be occasions where the balance of interest for the U.S. economy is, we ought not to impose this duty. The code before and now allows several ways of avoiding that. National interest is one, and our



major trading partners have national-interest provisions which allow them not to impose a duty even when there are sales at less than fair value.

Another is the imposition of a duty which is less than the full amount of the less-than-fair-value margins that have been calculated. The LTFV margins are 50 percent, but you only need a 5 percent duty to redress the injury.

Why do we impose a 45 percent duty and disadvantage industrial consumers who are trying to compete with Japanese multinationals on world markets? That is the issue here. And I suggest that it is time for us to be willing to balance various economic interests and not decide these things on theology; that is, somebody is being evil because they are selling at less than fair value.

Every major American producer—including our steel industry, by the way, which is going to testify later today—has been found to be dumping in Mexico and Canada within the last year. It is normal, commercial practice.

Mr. GARFINKEL. I don't think we will resolve this, obviously, but it is a tough issue.

Do you end up subordinating the interests of a petitioner that has proven dumping in order to protect the interests of a downstream industry, or don't you; and that is really what we are talking about in the circumstances that Mr. Horlick described.

If it would be all right with you, Mr. Chairman and Mr. Levin, I would like to proceed on to the third issue.

Chairman GIBBONS. Sure. Go ahead.

Mr. GARFINKEL. OK. Shortly after this issue is addressed, the domestic industry comes forward and complains that despite the existence of a 25 percent or 20 percent dumping margin, the prices of the digital assistance coming from Japan have not changed, they are still undercutting U.S. prices; in this case, they are charging \$1,500, the U.S. company is charging \$2,000. It turns out that the exporters are selling in the United States through their wholly owned U.S. sales subsidiaries; and the U.S. companies claim that the subsidiaries are effectively eating the dumping margin in order to buy market share or maintain their market share in the United States.

Now, under current Commerce Department practice, this kind of problem would not be addressed if we were in a—again, a related-party ESP scenario. Under the WTO, we would have the authority to go after this kind of problem; and the question is whether or not we should do anything at all about this.

Terry.

Mr. STEWART. Probably one of the remaining endemic problems for people who bring cases is the distinction that exists in terms of results between situations that involve purchase price—namely, where you are selling to an unrelated importer—and situations where you are dealing with an importer that is related and who has the option, if they choose, if they have the deep pocket, if they can cross-subsidize, if you will, eating the duties.

To the extent that this GATT suggests that relief ought to be in place for shorter periods of time, that there is a sunset provision it ought to go in, it has to be in the national interest to have the remedies when they are, in effect, effective. And right now, most

trade that comes in that is covered by cases is in exporters sales price situation, related party transaction. The result is that you can have companies who believe that they are internationally competitive, that they may be state of the art, that they may be the best producer in the world, but may be a single-product producer who are being driven out of a market over time by the deep pocket of their foreign competitor and not be able to get relief, even though they have an order in place.

We have a case where the order has been in place for 20 years; the dumping margins have been found every year, have been somewhere between 20 and 40 percent, often major companies, and the prices have not moved a penny in the U.S. market. So from the company's point of view, the remedy that is being provided under this law is totally ineffective.

Now, it may enrich the Treasury over time and it may be costly to their competitor to have to continue to pay those duties. But duty as a cost is one of the major opportunities that faces the Congress that can permit a rebalancing of the package and get effectiveness in the remedy under both situations, whether it is ESP or purchase price.

Right now, you can tell a client going into a case, as a result of purchase price, you will get your relief in the market almost immediately because the importer is having to pay the duty and you are going to see that effect. But that is not the case in ESP situations. Duty as a cost is a major opportunity.

Mr. GARFINKEL. Thanks, Terry.

Mr. ROSENTHAL. Just to clarify, under current U.S. law, the Commerce Department does not impose the duty as a cost to make sure that effectively, the related importer does not eat the duties.

The GATT does allow, does specifically authorize, the United States to do that if the Congress and if the administering authority chooses to do so. So, there is that opportunity that Terry was referring to.

There are other countries who approach the duty as a cost that way, particularly the Europeans.

Mr. GARFINKEL. Thanks, Paul.

You guys have 5 minutes.

Mr. SUCHMAN. I want to make sure that you all understand what it is that Mr. Stewart and Mr. Rosenthal are proposing. They are proposing that if you pay an estimated duty deposit of \$10, that that \$10 then enters into the calculation of whether the margin exists, keeping in mind that we have a retrospective system, as opposed to the European Community, which is a prospective system. So let me briefly tell you how this would work.

Let's say you have a home market price of \$100, and you have a U.S. price of \$90 in the investigation, and the Commerce Department says, you have to pay a \$10 estimated dumping duty for the next year until we review you. So you pay your \$10. In the meantime, you adjust your price to \$90—I am sorry, to \$100, and so when the review comes along, the Commerce Department is going to match the \$100 to the \$100 and deduct \$10 from it and say, well, you are still dumping, therefore, you continue to pay.

Now, this is entirely different from the European Community system, which is a prospective system, where they set the rate and



that rate stays in effect unless you ask for a review and a refund. So that if the community says—comes up with the same calculation, they are going to charge you the \$10, and then they charge you another \$10, which they kind of hold and you can come back and get later on.

Under the U.S. system, this makes absolutely no sense. Because as I say, you are talking about an estimated duty.

The idea is to get people to adjust their prices or to pay the duty.

If you are talking about administrating trade, just think of what happens if the U.S. now starts to track the prices down in the distribution chain to make sure that there have been price revisions. The U.S. law has always focused on an ex factory to an ex factory price comparison. And what is being suggested here is an entirely different system which roughly approaches a price maintenance system.

So I think this is not a direction we want to go in, and it is not compatible with the retrospective system we have.

Mr. GARFINKEL. I am going to ask Terry to sort of step back through it, because I am sure it makes some sense.

Why don't you go ahead and talk about what you have in mind?

Mr. STEWART. Well, the concept—from a domestic user base, domestic users would be happy to have the duties assessed on the first unrelated purchaser, because if that happened, you would, in fact, get the same relief in the marketplace that you see in purchase price situations. But the duty is a cost provision, which is part of the GATT code and which you can bet all of our major trading partners will use in the community—for sure will use, as the community fought hard to get it in, and it will be there.

What that provides is basically incentive. It says in a related-party situation, you have got two options. You clean up your price, so in fact you have eliminated the dumping—however you do that—and if you don't, you are going to do what 933 says, which is it is going to be treated—whatever you have paid is going to be treated as a cost. That is one way to get at the issue.

It is not necessary to go through the chain; 933 authorizes administrators to go through the chain and look at what the first independent purchaser does on resale for the purposes of avoiding customs fraud or price manipulation where you have multiple products. But that could be handled on an implementing basis in the United States in terms of the certification from the exporter.

I don't think domestic users are advocating a system that goes out and looks at the resale prices of independent purchasers. But what users have a great interest in is seeing that ESP approximates purchase price in terms of actually getting, in effect, into the marketplace so that we have a chance to compete. These orders don't do us any good if all it does is enrich the Treasury and doesn't provide relief to the necessary particular market.

Mr. HORLICK. When Duane Burnham testified to you last week on behalf of ECAT, he mentioned, on antidumping, there were some things he didn't like in the new code. This is one of them. This is adopting part of the EC practice.

When the EC put them into effect in 1986, Alan Holmer, general counsel of USTR, wrote them, formally complaining, pointing out the effect of the EC practice was a double antidumping duty. We



not only want this administered and legislated very carefully here, we want to make sure the U.S. Government doesn't let that happen to us overseas.

Despite what Terry says, we have already seen proposals, presumably without his assistance, that unrelated purchasers be liable for the duties, that they be asked to certify that they weren't compensated. Leaving aside the political charm of going after all of those customers, what is being talked about is resale price maintenance, which would probably violate antitrust laws here.

So we are very wary of what is done here, but we also want to make sure that foreign countries don't do this to us overseas—we are very worried about it.

Mr. GARFINKEL. Terry, final comment?

Mr. STEWART. Well, 933 is part of the GATT. You can be sure it is going to be in every dumping law around the world. What the U.S. Congress has the opportunity to do with the administration is to step back and address the endemic problem in the system, which is that there is not price relief in many cases where there is ESP.

Duty as a cost is one of the handles that can be used, and it can be handled in such a way that it does not impact the downstream purchaser in terms of the resale pricing.

Mr. GARFINKEL. Questions, Mr. Chairman, Mr. Levin?

I am glad we resolved that one.

Chairman GIBBONS. I can see that one is going to be fun.

Mr. GARFINKEL. All right. Let me move on to the next one.

Shortly after this latest issue was fought out among the lawyers, the Japanese producer of digital assistants sets up a facility in the United States to produce the product. They are aware of the current antidumping law on the books in the United States, which focuses on the value of the parts which are imported from Japan and the non-Japanese value, and as you know, if that value is small, then the Commerce Department can go ahead with a circumvention finding.

So the Japanese are smart and they decide to work around this. So they direct their subsidiaries, wholly owned and partly owned, in Malaysia, Singapore and Indonesia to ship in the parts that were previously coming from Japan. The way this works out, 25 percent of the parts are coming from Malaysia, 25 percent from Singapore, 25 percent from Indonesia, 5 percent from Japan and the balance is from the United States.

Now, under U.S. law, this would not be defined as circumvention, and I think there would certainly be some question as to whether or not this ought to be addressed. I will ask Mr. Horlick or Mr. Suchman to respond first, and then Paul will handle it.

Mr. SUCHMAN. I have a simple response to that. Great. So what? I mean, isn't that what this is all about? Globalization of trade? We have convinced the Japanese that they ought to produce in three emerging markets around the world. This is not what the dumping law was meant to address.

If, in fact, some of those parts are being dumped from Malaysia, then there should be a case against the Malaysian parts. But I don't, for the life of me, understand the rationale of taking an order against something that is 100 percent Japanese and applying it to something that is 5 percent Japanese.

I mean, if the industry concerned needs escape clause relief under the safeguard provisions of the GATT, they can do that on a multilateral basis. But this is not the kind of thing the dumping law ought to be addressing as the globalization of trade is going to assure that there are zillions of cases of this kind of thing going on, and we should encourage it.

Mr. GARFINKEL. Paul.

Mr. ROSENTHAL. I do take issue. I didn't think the purpose of the antidumping law was to encourage the production of parts in Indonesia. The idea here is that if the assembled product has come from Japan, is to provide a remedy for that dumped merchandise to the U.S. industry who has been injured.

Now, if what the Japanese do is to change their pattern slightly and instead of producing all of their parts in Japan, they get some parts from Indonesia or from Malaysia, and they ship it—it is the same product with a slightly different variation in the sourcing of the components—that should not be a situation for which relief is denied in the United States.

Now, the Congress in 1988 said, "You are right, that should not be a situation where relief is denied." What Congress said was, "If the difference between the final product imported in the United States and the value of the parts from the original country—take Japan, for example—is small, then we are going to find circumvention." In the scenario discussed, the foreign companies are just trying to get around the order by setting up screwdriver assembly facilities in the United States. The problem with current law is the definition of the word "small" and the attempt to compare the final assembled product in the United States with parts from the originating country.

What often happens is the facts are a little different. It is not the situation, the facts, the hypothetical that Mr. Garfinkel mentioned where it is 5 percent originally from Japan and 25 percent from a couple of different countries. He may have originally 70 percent of the parts in the original assembled products from Japan, 25 percent from Malaysia and 5 percent from Singapore. The dumping order comes on, and then they just change that pattern and they have a little bit more in the United States, a little bit more elsewhere, but still maybe 60 percent or 55 percent of the parts from Japan.

The U.S. law ought to be changed to address that situation. We ought not to be hamstrung to prevent ourselves from going after what is obvious circumvention, and there ought not to be these formulae that prevent you from addressing the redistribution of the sourcing of the parts.

There are innumerable examples of the current law being inadequate to deal with the industry attempts at diversion and circumvention that are going on. I understand you have a representative from Corning here to testify, who will tell you about what has happened in the TV and color picture tube area; and I think it is important that you listen to that testimony.

Recognizing what Mr. Stewart said before, these cases are very costly, very expensive. Now, with the sunset review, they are going to be of limited duration, and in some cases, where you have exporter sales price situations, there may be limited effectiveness. At

least what the Congress ought to be saying is "Once the order is in place, let's not make it too easy to get around it." Let's make sure that whatever relief we are going to have is effective relief. I think you must do that in the area of assembled products.

Mr. GARFINKEL. Let me just, if I could comment on the genesis of the current U.S. circumvention provision and why the Congress didn't go further to go after parts that were produced in third countries—and this goes back to the basis for an antidumping order—antidumping orders are brought against specific countries. They are not brought against companies. And that is where the problem comes in.

If you have an order on a product from Japan, then what our circumvention law as currently drafted does is it says, look, even though it is being assembled in the United States, there are a sufficient number of parts coming from Japan, it is mostly Japanese; that we can sort of construct this as a Japanese product and still consider it within the scope of the original antidumping order.

Once we move beyond that and start talking about a product that is being assembled in the United States, that has parts from a variety of sources, it begins to lose its Japanese origin, if you will. That is where we may potentially run into problems in the GATT on this issue, if we move too far off the product that was originally covered by the order.

Now, I know there may be a difference of opinion on this.

Paul, would you like to comment, and then I will turn it back over to this side.

Mr. ROSENTHAL. Real quickly, there are many cases. One example is forklift trucks from Japan, where the original componentry was partly Japanese, partly Malaysian, partly Singaporean, but it was viewed as an export of a Japanese truck from Japan. You ought to still be able to go after that situation where you don't have 100 percent components from the original exporting country, where there is a mix; and there are situations that have 30 percent, 50 percent, 20 percent from a variety of different sources, including the USA.

Right now you can have a dumping case where there is some value added in USA of maybe 20 percent, so only 80 percent comes from a foreign destination and maybe only 50 percent from the exporting country, that is the country under the order.

Yes, the GATT has decided to take a pass on this. Clearly, whatever we do here will be scrutinized, but I don't think we should shrink from dealing with those fact situations where you have the 30 or 50 percent of parts from a variety of sources.

Mr. GARFINKEL. I think the point is that once you have got a dumping order on the books, there has to be a way to protect the integrity of that dumping order; and with the globalization of production, the argument is that it becomes very easy to shift production of parts from one subsidiary to another in order to get around the fairly rigid test we have in U.S. law.

Gary.

Mr. HORLICK. You are going to hear a lot of wishful thinking about what we can do. I have seen testimony already that we can ignore the sunset provisions because they don't apply to us, and



you are going to hear wishful thinking that we can decide cases on presumptions or without facts.

Well, this is one of those proposals from fantasyland, unfortunately. Under the GATT, whether we like it or not, you can only apply a duty to the product you found dumped by the country from which you found it dumped. And that is just reality. And you are not going to be able to apply duties to parts from third countries. And that is pretty clear. We are going to lose GATT panels on it immediately.

It is wishful thinking to say—and we have heard this even from some administration people, that since the code is silent, we can do whatever we want. You can't. Under the code, in which the United States negotiated a lot of procedural stuff you heard about, well, you have to follow the procedures, you have to have an investigation. It is black and white.

Mr. SUCHMAN. Let me just add one very brief comment. If you want to think about managed trade, you should think about what would happen with the logical extension of what these gentlemen are suggesting. It has always been a basic principle of U.S. import law that you take the product as it is imported.

Importers are very innovative in drilling holes in things, in changing the classification so that it comes under this tariff line item instead of that tariff line item. It is a perfectly legal concept.

The idea that folks are going to move—the dumping law is designed to prevent price discrimination between the home market and the United States. If they move part of that to another home market, you don't have the basic building blocks for a dumping finding. That is why the agreement prevents it.

Mr. LEVIN. Let me just ask a quick question. I don't know how much time you want to spend on each of these—

Chairman GIBBONS. Well, we are getting to the guts of this thing.

Mr. LEVIN. So let's just take a couple of minutes.

Now, let's say that—let's not take Rick's situation where there is a dramatic shift. I have never had the pleasure of practicing, as a lawyer, trade law, but I assume where there is this kind—where, in his example, there is a major shift, the foundation of the original order may be eroded, just in terms of cost analyses. But let's say that there is a shift of a small amount of the production of components to another country, and there isn't that much difference in cost.

Now, you are saying that just because of that shift, the anti-dumping orders should not be applied?

Mr. SUCHMAN. No. Under current U.S. law, if the shift is small, in effect, if value added in the new place, whether it is the United States or a third country, is small, then the order does apply.

Mr. LEVIN. OK. So—

Mr. SUCHMAN. By the way—

Mr. LEVIN. Let me just ask you, that seems to me, what you just said, to contradict what Gary just said about the interpretation of GATT, because under yours, even if there is only a small shift, we would not be able to apply our law. And I would hope that is not true.

Mr. HORLICK. Let me take the extreme case. Let's say you had parts assembled in France, and we find the product dumped. Someone takes the whole kit of parts, and just moves that whole kit to the United States.

There is enough customs doctrine, we can probably get away with saying it is still the same product.

Mr. GARFINKEL. It is still Japanese.

Mr. HORLICK. French in my case.

Mr. LEVIN. Let's use France. But if they shift 3 percent to Monaco and they do a little something there, and then ship it back, and it all comes to the United States under present U.S. law, we can still apply our antidumping, right?

Mr. HORLICK. In fact, what the EC—

Mr. LEVIN. OK. But when you said earlier—you would seem to be saying we could no longer do that under the Uruguay round. I would hope not.

Mr. GARFINKEL. It depends on how much you shift it. What we are saying is that at a certain point it is no longer small. When enough of the parts are no longer French or Japanese or whatever, it begins to take on the character of a different origin—perhaps the United States if the assembly is in the United States.

And I think what you are getting at, with a slight shift, which sort of takes you over the line from small to not small, which would then be outside the scope of U.S. circumvention law; should that be reachable?

Mr. STEWART. Well, whether it is GATT-compatible or not presumably is yet to be decided. It is not the case that there is a void and no action being taken. The agreement says that the parties—that it is an important issue, was an integral part of these negotiations, and that the parties weren't able to reach agreement, and that it is to be taken up in the context of the code committee.

Well, the position that the United States had on the table pretty much for the last few years, and as far as I know, remains the administration's position, is that there are problems in terms of what may be called countryhopping. You don't have to deal with parts, you have them in international countries to pick up the phone and say, well, I have a dumping order in my French plant, so let's ship it out of my Belgian plant.

You have to ask yourself, is that something that should be reachable? The United States tried to make that reachable in the context of the round, and they try to make that reachable in the context of the code committee work. And in most modern products, certainly consumer electronic or computer products, the parts presently are not a majority of any one country. And while we are always happy to hear that the concept of the suppliers from customs law might be viewed from a customs perspective to make it the same product, the reality is that our trading partners strongly disagree that if you just take all of the parts that were assembled in France and ship them to Belgium and assemble them there, and it comes in, it is still covered by the order. It remains an issue of major controversy.

The reality is that U.S. law, as presently structured, is not guaranteed to be picked up under the GATT, so that—even if all of the parts were German or French that were shipped in. So you ought

to be looking at what is realistic from an enforcement point of view. How far do you want to stretch that process? What is the minimum? What is the maximum? And we then have to get the administration to continue its fight in the GATT to get rational coverage.

There is an irrational concern, it seems to me, amongst many of our trading partners' positions in that you can take something that has hypothetical 1 percent value added, everything else is moved and 1 percent value added is added in a third country, and it is no longer covered.

What about half a percent? What about 5 percent? To date, there hasn't been an engagement as to what would be a rational compromise, and so there is no protection for any of the circumvention provisions, including what we have on the books now.

Mr. GARFINKEL. My guess is that we probably won't work this out in code committee, because there was such heated disagreement on this issue during the GATT negotiations that it probably is not going to be resolved. The way it will be resolved will be through a panel proceeding.

You can bet that the first time that the United States uses this provision, its current law, or perhaps a new provision that you might legislate. In a way, that perhaps crosses the line in the eyes of some of our trading partners. It will be litigated, and we will get an idea of what the GATT law is going to be on this.

Mr. HORLICK. Let me just add one thing. I can understand your concern, and it is going to be really difficult. My point is a legal one.

I think it is going to be real tough for the United States because of the way we left it in the GATT. All three of us actually have administered these laws at one time or another and run into these issues of people drilling holes in things or painting red stripes on them. The difficulty is trying to find something that makes sense while at the same time staying within the confines of the rules.

My example is a pretty extreme one, where all of the parts have French character either because they are French, or they have lost their identity, and it is shipped as a kit. I am sympathetic to the problem, and I am sorry something wasn't worked out in GATT, because it is a real problem for us. But I don't want anyone indulging in any wishful thinking that we can do whatever we want.

Mr. ROSENTHAL. I agree with Gary on that, which is the reason why it is really up to the Congress to come up with what it regards as a reasonable solution to an undeniable problem; and then let's hope that we can get that GATT panel to approve what the Congress decides is the right way to go on this.

Mr. LEVIN. You are going to get your heads together and give us a consensus, right?

Mr. SUCHMAN. I am not sure I agree——

Mr. LEVIN. Gary was reasonable and acknowledges a problem.

Mr. SUCHMAN. I am not sure the Congress needs to do anything. What Gary is saying is, we may have a code problem. U.S. law since the 1970s has recognized this, long before we had a specific circumvention provision to determine what the country of origin was.



I remember dealing with a case of Japanese walled swimming pools back in the middle 1970s when they took them to Taiwan and assembled them; and we said, no, those are Japanese products.

I don't think there needs to be any change in U.S. law. We need to make sure we protect our ability to deal with these things in Geneva. But that doesn't—I am not aware that we have a problem in not being able to deal with what are legitimate anticircumvention cases under existing law.

Mr. GARFINKEL. I think the question that is posed today is perhaps broader than whether or not we have a problem with current U.S. law; it is whether we are going to go any further and broaden the scope of the circumvention provision to cover the circumstance that Mr. Stewart described, where parts might be shifted from one source to another in order to get around a dumping order.

Any further questions?

OK.

Chairman GIBBONS. I am glad this subject is so damn simple. Go ahead.

Mr. GARFINKEL. Well, this order, Mr. Chairman, Mr. Levin, has been on the books for a number of years, despite all the efforts on the short supply side and elsewhere, and it is now the fifth year. The ITC, under the WTO provisions, is required to initiate a review to determine whether or not, in the absence of the order, dumping would continue.

The fact pattern at this point is as follows:

The margins have declined over the last 5 years from about 20 percent down to 7 percent;

Imports have leveled off;

The domestic producers' market share is growing at about 2 or 3 percent a year, but the Japanese companies are adding capacity furiously, capacity that would not be soaked up by sales in their own market or in other third-country markets.

Now, the question is, what kind of guidance should the Congress give the ITC in terms of how it approaches this kind of review? What evidentiary burdens should be placed on the petitioners and what burdens should be placed on the respondents? How do they deal with this somewhat speculative question of whether or not, in the absence of the order, the dumping would continue?

I will ask Mr. Stewart to respond.

Mr. STEWART. First, the change that is required by the code, there are three, three elements. The code has a presumption of revocation absent an affirmative finding. It is silent with regard to whether there is a burden of persuasion on any particular party. Probably the negotiating history would suggest that there is supposed to be a burden on no one, which is somewhat of a non sequitur, in fact; and third, the test is whether the ex prae of the duty would be likely to lead to continuation or recurrence of dumping and injury.

There are many terms in that that are not part of existing U.S. law. The key for—I think the key problems from domestic users are going to be the following:

If presently it is difficult to win a case at the commission—many would say that you have to be injured to win a threat case and you have to be very injured to win an injury case. That means that you

have closed plants, laid-off workers, reduced R&D, reduced capital expenditures, and in short, you are behind.

If you won a case and you start to look at, will I reinvest, the question becomes, can I generate an adequate return, and if there is only a 5-year window, there are going to be major concerns about making the reinvestments. So there should be concerns with the sunset provision from a number of angles from the Congress.

First, since we have to do these 5-year reviews, the commission should be trying to make sure that relief is available early, so that if an order expires at the end of 5 years, in fact, the industry is back on its feet and the level playingfield that gets talked about so much has in fact been restored.

In terms of dealing with prospective issues, it is not only prospective issues that are permitted to be examined under the test. The test talks about continuation or recurrence. I believe that if you look at the distinction between the exporter's sales price and purchase price, there is good reason to believe that that distinction is important.

Take an issue like price underselling. In a purchase price situation, price underselling is taken care of by the fact that the importer has to pay the duty. In an ESP situation where dumping continues, presumably there is some measure of price underselling or price suppression going on by the mere existence of the dumping, because it is not being passed on into the marketplace.

If this becomes a full-blown investigation at the commission, the commission will not have the resources, and you will be imposing a substantial additional cost on the party who is there, only because dumping is continuing.

Remember, under our system, if dumping ceases, we don't get to year 5. Year 5, the order is revoked because the dumping has ceased.

So I believe that the Congress needs to take a look at the elements of the statutory—of this code language to make it a reasonable test. And I think that there are presumptions that can be drawn, laudable presumptions that can be drawn from facts that will be apparent, with a minimum amount of information that will be required and with an obligation to verify the information that historically has not been verified.

Basically, on the recurrence issue you are looking at something like threat. On a threat situation, most of the information is in the respondent's hands as to what their capacity is, what their marketing plans may be, what their alternative markets may be, et cetera, and historically, that information has not been verified.

So I believe that you can take the lack of test on burden, make some intellectually objective presumptions based on the existence of dumping, whether it is a purchase price or an ESP situation, or a range of other issues that will simplify what the agency has to do in conducting these, to reduce the time periods of information that they seek and provide some definitions so that, in fact, domestic industries have a chance of establishing an affirmative case, even though it is speculative in nature.

Let me just make a mention about the practices of our trading partners. Most countries hold up the fact that everyone else has some kind of a 5-year review or 3-year review system in place. And

that is, in fact, true. In Canada, in the last period it was reported to the GATT that there were three orders revoked under that system. In Australia, which has as many orders as the United States, there were three orders revoked under that system. In the European Community, I believe there were four or five orders revoked.

Under our system, which has sunset provisions, stop dumping or you mount the hurdle of changed circumstances, we had three orders revoked in that 6-month time period. It is not the case that the sunset provisions should pose huge new hurdles to domestic industries maintaining relief where dumping is occurring.

Mr. GARFINKEL. Paul, 2 minutes.

Mr. ROSENTHAL. Just to supplement briefly what Terry said, one major difference is the GATT is going to require of U.S. law this new sunset provision which says, you must review whether the unfair trade practices are continuing or not. By definition, because you still have an order after 5 years and the foreign producer hasn't eliminated the dumping or subsidies, the unfair trade practices have continued. Many U.S. industries cannot understand why they have to go through this sunset review when the unfair trade practices continue.

There is another change in the GATT for U.S. law. Under U.S. law now, in order for there to be revocation at the ITC for changed circumstances, the burden of proving the circumstances has changed sufficiently is clearly placed by the Congress on the foreign producer.

The foreign producers are the ones who have got most of the information at their disposal. They know their capacity, their capacity utilization, their strategy and the like; and quite appropriately, the ITC and the Congress in the 1984 Trade Act placed that burden squarely on the foreign producer.

Now, what Mr. Stewart is talking about here is not anything like the explicit burden that exists in U.S. law, because it is unclear how that will survive GATT scrutiny. But it is quite appropriate to talk about who has got the burden of coming forward and making certain presumptions, when you understand who has the information. That, I think, is going to be a crucial part of what the Congress does in implementing legislation—to make sure that the sunset reviews will be workable. There will be a lot of activity at the ITC to try and deal with all of these questions.

Mr. GARFINKEL. Thanks.

Rebuttal, Mr. Suchman.

Mr. SUCHMAN. Mr. Chairman, I am not sure, first of all, how much attention we ought to pay to what our partners do; but just looking at that, my experience has been that they revoke far more orders than Mr. Stewart seems to believe. But for our own benefit, we ought to do it.

We have orders on the books that are 20, 25 years old. The Commerce Department struggles with something like 300 dumping and countervailing duty orders. They are further and further behind, given our retrospective system.

It is impossible to get a revocation except where the domestic industry has decided that for one reason or another they no longer want an order, because the minute somebody files a paper saying, we object, the Commerce Department doesn't revoke.



We hear about the unfair trade continuing; as I said earlier, unfairness is in the eye of the beholder. This is not a religious issue; it is a question of price comparisons, and that is less than a science. It is not—I am sure—even an art. But the fact remains that we have an opportunity here to put in place something meaningful to help relieve this tremendous administrative burden.

Nobody is suggesting that orders ought to be automatically revoked. But at the same time, there ought to be a meaningful review by the ITC which has considerable experience in looking at threat of injury, which is really what we are talking about here. The first thing they ought to look at is whether or not the domestic industry is injured right now, with the order in place, because if it is, then there is a presumption that it is not the imports that are the problem, since the courts and the commission have said that when there is an order, the unfairness is no longer there.

Starting from that point, one looks at whether there is a likelihood of increase of imports, what the market penetration trends are, what the pricing trends are, what the foreign domestic capacity utilization trends are. I mean, these are no big secrets. These things have been developed over time. It is clearly within the ability of the commission to do it.

What we have to do, however, is give them sufficient time to carry out a meaningful review; and I would suggest that the transition rule that somehow got negotiated here is what is going to cause a humongous problem. Because I don't know how the heck the ITC is going to deal with 300 dumping and countervailing duty orders in a 1-year period, preceding the fifth year after the implementation of this agreement, and I would suggest that that be re-examined and that the Congress seriously look at including in the legislation authority for reviews to begin immediately with the oldest orders and that the commission be able to work through this 5-year period. Otherwise, they are never going to be able to make meaningful reviews.

Mr. GARFINKEL. Mr. Chairman, there are obviously two issues on the table. One is the timing of these reviews for existing orders—and I know this team over here will want to comment on that—and the other question is really where the burden should lie. How difficult should it be for the domestic industry to essentially continue with the order that it prosecuted the first time around 5 years ago?

Chairman GIBBONS. Wouldn't it be reasonable to put the burden with the person that has the information? Is that the way you track it?

Mr. HORLICK. The United States in the negotiations the last 2 years made a big deal—and your staff can tell you this with greater certainty than I—that the burden should be essentially on the authorities. That was the agreement; the burden is on the authorities. My recollection is that when you put on presumptions, you are shifting burdens.

So we are stuck with the situation where the burden is going to be on the authorities to get the data. If you try to use presumptions, there is going to be no credibility to the decisions. The transition period is the same problem. You have to let the commission have the time to do a good job to be credible.

I don't think anyone on this panel wants the commission having to vote without good records, good investigations, and vote in a hurry. You have to set up an orderly process.

I don't know if "oldest first" is the right rule. I am sure that will be the nastiest fight going as to who goes first in this line, but you are going to have to set up some orderly process of how the commission gets on with this work.

Chairman GIBBONS. What is wrong with oldest first?

Mr. HORLICK. Only if you are the oldest. I will leave that to you all.

Chairman GIBBONS. We have got to tell them to start somewhere.

Mr. HORLICK. I expect that to be one of the fiercest fights of the whole legislation.

Chairman GIBBONS. Starting on the newest first would be obviously wrong.

Mr. HORLICK. You are going to have to find a rule that is going to be hard fought, because the people with the oldest orders don't want to go first.

What you say about newest makes sense. I don't know—I don't have an answer that is going to please everyone, but I doubt that there is one.

Mr. GARFINKEL. Terry, do you have a comment?

Mr. STEWART. Several, several comments. First, it is the case that the U.S. negotiators fought hard to make sure that it was not simply a threat review that was required. The word "continuation" is there, unlike what Mr. Suchman would like to believe, exactly because you have situations such as ESP where there can be continued dumping and no relief in the marketplace. To the extent that the Congress changes and actually provides relief in the marketplace where dumping continues in ESP situations, then one may be left only looking at recurrence.

But continuation is part of the consideration, and if injury is continuing, it is not a presumption that the order should go away. That is one of the two tests that is available there.

With regard to the transition rules, the United States fought hard to get all orders to roll over so that because you have a lot of companies who invested a lot of money going back into businesses on the basis of these orders being out there, and they hope—in the hope of getting fair trade in the marketplace, everyone would be on an equal footing.

If you look at the orders that are there, there are something like 280 dumping orders; those break into something like 111 products. There are lots of ways for the commission to consolidate the work so that it can be done in a rational way.

There are ways—while the rules talk about a 12-month normal period for doing these reviews, there is no reason that these reviews can't be done on a 3-month cycle and that you can obtain the information or send out the questionnaires ahead of the reviews' commencing.

In looking at the commission's workload over the years, there is a difference in terms of investigations that they have conducted and completed in any year of more than 140; you go from a low in the high 80s to a high of 225. So I think most companies who were

there, who accepted the sunset provision, people who had orders, it was on the understanding that they would be given the full 5 years before they had to go through a review once this thing was implemented. And the bogeyman of impossibility of administrative process may be there at the end of the day as a real issue.

But it doesn't—it isn't a real issue if one starts to look at the numbers. It appears as though the commission ought to be able in a 12-month, 18-month, 24-month time period, roll through these cases; and the presumptions, unlike the comments of Mr. Horlick, are not designed to avoid the obtaining of information. They are designed to provide a set of benchmarks as to how an agency can go through data that is out there and draw logical inferences from databases.

In other words, if you are looking at whether there will be a recurrence of dumping, what do you make about the fact there is dumping going on now? What is illogical about saying if there are dumping margins now? That is fact. There is a presumption that dumping will continue. To me, that would seem to be a fairly logical presumption. Rebuttable.

The other side comes forward and says, unique situations. Currencies have collapsed. We have suddenly raised all the export prices, and there will be no dumping. A rebuttable kind of issue.

I think if one simply says this will be a 12-month investigation then you have an impossibility for the commission. If you say commission, we ought to do this a rational way with you and in a way that doesn't impose huge costs on an industry that has already been injured. Let's try to do it in a 60-, 90-, 120-day time period. You should be able to roll through the process without overburdening the commission and the industries.

Mr. GARFINKEL. Mr. Chairman, I think we have exhausted the time that the committee has allotted to us.

Chairman GIBBONS. Let me ask you a question on this. Who goes first in this sunset? Would it perhaps not be desirable to start with the oldest first but say anybody that had not had their dumping order in for 5 years would cast the burden on the other side under these older starting-off reviews?

In other words, if it is over 5 years—if we start with the oldest first and we say that all reviews must be at least 5 years away from the fact, wouldn't that be the way to solve the question of the backlog of cases we have?

Mr. STEWART. That is one way, Mr. Chairman.

I would suggest that on many orders you have multiple cases.

Chairman GIBBONS. Yes.

Mr. STEWART. If you have somebody with an order from the 1970s or late 1980s they don't presumably—they would prefer to have the cases looked at at the same time in the 5-year time period. It becomes a question: Do you roll those back?

There is the issue of is there a distinction between people who have an active case where dumping margins continue to roll up versus those where there have been no reviews in a 5-year time period. Would that be a better indication of perhaps lack of interest or something of that sort?

There are many permutations that have been floated around, but you start off not with 300 cases, in fact, but, through the ability



that the commission ought to have to consolidate, you are looking at a number closer to 110 is what you are looking at. The question becomes what can they reasonably do. If you can't decide what they should reasonably do until they have a correct module of the time, they need to do it.

Chairman GIBBONS. As I recall, the witness we had last week suggested that nobody gets reviews for 5 more years. Everybody was guaranteed 5 years from the date of the agreement.

Mr. HORLICK. I don't think USTR would agree.

Chairman GIBBONS. No, I said one of the witnesses we had last week, one of the Members of Congress testified to that.

Mr. SUCHMAN. Mr. Chairman, you will probably want to hear from the ITC staff on this if you haven't already. We can sit here and debate as to what they can and can't do. I would like to hear from them what they think they can do. Despite Terry's optimistic views I suspect they will not want to face even 110 reviews in a 1-year period.

Mr. HORLICK. Or a 2-year period. It is too much. Just ask the commission.

Chairman GIBBONS. All right. Well, thank you all.

Mr. GARFINKEL. Thank you, Mr. Chairman.

Chairman GIBBONS. I hope I understand things better.

Chairman GIBBONS. We now go to a panel consisting of Mr. Smith, Mr. Cannon and Mr. Comer: Mr. Smith of Corning-Asahi Video Products Co., Mr. Cannon of American Iron and Steel Institute and Mr. Comer of Southdown, Inc.

Mr. Smith.

**STATEMENT OF CLIFTON L. SMITH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CORNING-ASAHI VIDEO PRODUCTS CO.**

Mr. SMITH. Yes, sir.

Good morning, Mr. Chairman, and thank you for the opportunity of being here. It is going to give me an opportunity to talk in layman's terms about some of the problems we have been listening to for the last couple of hours and, hopefully, will put it into real perspective.

Chairman GIBBONS. I saw you following it very closely back there.

Mr. SMITH. I was trying.

My name, again, is Cliff Smith. I am a 32-year employee of Corning, Inc. You used to know it as Corning Glass Works.

I spent the bulk of that time in the television industry, well over 20 years, and of that time I spent a good many of those years in the actual factories making the product.

We had four factories at one time. We now have one. We shut three down.

I took a 10-year leave, if you will, to another business within Corning and have now recently come back as president and CEO of our television business.

Some things are different. Some things are the same in this business.

One of the things that is quite different is that when I left the business there were many, many American tube producers that re-

ceived our glass. Today, there is one. Zenith Corp. is the only American company in this business today.

Things that are the same is the prime issue, is that there continues to be major dumping going on and a great threat to this industry.

Chairman GIBBONS. When you say received your glass, did you all produce the actual frame of the glass?

Mr. SMITH. That is correct.

Chairman GIBBONS. You made the bulb.

Mr. SMITH. Bulb is exactly the right term.

Chairman GIBBONS. You made that at Corning and shipped it to the other people who assembled the rest of the stuff that went inside the bulb.

Mr. SMITH. That is correct. And they sent it to the setmaker who puts the chassis on and so forth.

In any event, I can remember when Corning employed literally thousands of people in this industry just making glass. At that time, the profits were reasonable, and things were quite good.

Today, we have only one factory left. It is in State College, Pa. It employs about 1,200 people, and it is only moderately profitable.

Three factories are gone. There was a factory in Corning, N.Y., that had to be converted into another product line. There was a factory at Albion, Mich., Mr. Levin's home area, that was shut down totally and approximately 1,200 people were put out of work. That was in the late 1970s.

In the early 1980s, we had to shut down our Bluffton, Ind., factory and another 1,200 people were put out of work. These closings caused very major problems to us and to our people.

I had the fortunate opportunity of being in the Bluffton factory at the time when the last 50 people went out of that factory. I knew them. I worked in that factory 5 years. I went to the exit door and shook their hands. It was a rather emotional experience, grown men with tears in their eyes and fear in their hearts. They didn't know where they were going or where they would get their next job or how they would take care of their families.

I would go so far as to say that if I had the good fortune of having you and this committee with me in Bluffton at that time of the plant closing, there would be no reason for this hearing because I know how you would vote on this issue. But the fact is it is still an issue.

Let me move on into dumping now and just address that as an issue.

Dumping is basically caused by a closed market in certain market areas, Korea, Japan, et cetera, which enables two-tier pricing. Such pricing basically means they charge a lower price for the products that they export to us than they charge within their own country. As a result, they impair and do injury to a third-party company like ourselves, Corning Inc.

This dumping and injury will continue until these markets are open because when the markets are opened the two-tier pricing will disappear and so will dumping. But only until that happens will we have a solution.

I refer back to your opening comments about the closed market in Japan today, and I can only commend you for your assessment.

You are, in my opinion, exactly on target. Your understanding and outlook is really right in line with ours.

This situation has been a problem to us for the last 20 years—20-plus years. We have brought a number of cases during that timeframe, and we have succeeded on all of them, frankly.

Unfortunately, when we win a judgment, there is a drastic drop-off in the amount of imports immediately, but the imports expand a short time later as exporters find loopholes in our law. This has happened time and time again. It is a classic case of action and evasion.

For example, when the problem first started, it was a problem associated with the Japanese primarily exporting total sets into this country, and we fought that battle and won. Then they began to send in components, tubes and other parts, and we fought that battle and won. Now they are sending the components to Mexico, the Maquiladora plants, and we have not won that yet. That is still happening.

So we have a major, major problem.

The next area I see as an attack on us as a Nation will come from Southeast Asia and China. In fact, it is already happening, in my opinion. It is not a yet monumental problem, but it is a problem, and it will get to be monumental because our studies show by the year 2000 or slightly before there will be a gross overcapacity of products in Southeast Asia.

These products are not going to go into Japan nor into Korea nor Taiwan nor China nor even to the EC. They are going to come here, and it will create a major problem for the American television industry and a major, major problem for our American workers.

The industry has an opportunity coming up right now with a great new technology called high definition TV, HDTV. It is going to have a revolutionary impact on the industry. It will bring extra fine home entertainment into all homes, and I think there will be a major turnover created in opportunity for selling televisions.

I see it happening for a long time. I think it will fuel the industry for a long time.

My concern is there may not be American industries participating in HDTV. And why do I say that? Well, I say it because this business, this HDTV, will require very, very high capital to get into the game. The cost of design, cost of manufacturing, production, production facilities, et cetera.

Frankly, with the situation we now have with the antidumping law being weakened, with the Asian dumpers and others joining them, still a serious threat, I see American industry and American businesspeople like myself looking rather foolish if we go out and spend hundreds of millions and, maybe billions, of dollars to really get into this industry only to be undercut by cheap imports coming from such places as Southeast Asia and China, et cetera.

This is going to impact significantly, in my opinion, not only the glassmakers—I am personally involved here—but it will also involve the setmakers, tubemakers, people who produce electronic chips used in the sets, even the furnituemakers used for the cabinets. This is a massive potential loss and one that I don't think we can afford to let happen.



How can you help? Well, the fact is the recent GATT meetings held in Geneva did weaken our antidumping law. I think our people, Ambassador Yerxa and his people, did a wonderful job, but they were forced to compromise. They did a wonderful job, but you have it in your power to adjust the package to fine tune and protect American industry to some extent. Help us with a level playingfield. That is all we really ask for.

Our people are great. We have hard-working, intelligent people who can compete with anybody in the world. We have wonderful technology that can compete with anybody in the world. But unless the playingfield is level, dumping is a serious problem and may well keep us from getting into the HDTV game.

We can compete. I have no doubt about that. We are fighters. We can win. But we need even odds.

Let me close with a quick example of something that I recently did.

I just came back from Japan on a business trip. While I was there, I took the opportunity to visit a couple of department stores. I went in and looked at TVs. That is one of my favorite subjects.

I found a conventional 27-inch, loaded with all the bells and whistles that we all like in our homes, and the sales price ranged from \$800 to \$1,000. Now, any of us here today can go to Circuit City or Best Buys, and we can buy that absolutely identical set for less than \$500, and, in fact, I have seen some on sale for \$370.

So this is a problem. There is still two-tiered pricing. There is still dumping. And it is really having a manifest impact on us in a very, very negative way.

I encourage you to look at this with all diligence. We need your help, and I thank you very much for your time.

Chairman GIBBONS. Thank you.

[The prepared statement follows:]

**STATEMENT OF CLIFTON L. SMITH  
PRESIDENT & CEO  
CORNING-ASAHI VIDEO PRODUCTS**

**Before the**

**SUBCOMMITTEE ON TRADE**

**COMMITTEE ON WAYS AND MEANS  
UNITED STATES HOUSE OF REPRESENTATIVES**

Mr. Chairman, my name is Clifton L. Smith. I am President and CEO of Corning-Asahi Video Products Company, located in Corning, New York. My parent company, Corning Incorporated has been involved in the television business since the 1940s when Corning, in collaboration with RCA, invented the process for manufacturing glass for television picture tubes. We have grown up with this business starting with round screen black and white televisions, moving on to ultra rectangular color television sets, then to projection TV tubes and lenses and finally to flat panel display screens.

**THE IMPLICATIONS OF HDTV**

My company, along with other U.S. producers, is now poised on the threshold of a whole new era in video broadcast/reception and display. Known as "High Definition Television" (hereinafter "HDTV"), this emerging technology will have a significant impact on both entertainment television and industrial and military use of computer and display devices.

HDTV places the domestic television industry at a technological crossroad. During the next few years, participants in the domestic industry will be driven by the demands of HDTV to develop and produce much larger, higher resolution picture tubes capable of displaying high definition television signals. The demands that this technological evolution will impose on domestic producers of color televisions ("CTVs"), color picture tubes ("CPTs") and CPT glass in terms of research and development and capital investment will be substantial.

Japan, the country responsible for much of the economic harm experienced by the U.S. color television industry in the past, has already established itself as a major contender in HDTV technology. Given the enormous commercial stakes associated with HDTV, there is no reason to expect that the Japanese companies now involved in the development of HDTV will alter their traditional competitive strategies in supplying HDTV to the U.S. market. Indeed, most of the Japanese firms now active in the development of HDTV are the same companies that have been the target of the domestic industry's antidumping actions.

Securing domestic firms from the threat of a new wave of dumping from Japan and elsewhere is critical if domestic firms are to play an important role in our own HDTV market. Unless domestic producers are permitted to earn a fair return on present sales, they will be unable to generate the financial resources required for long-term investment and participation in this evolving industry.

## THE U.S. COLOR TELEVISION INDUSTRY HAS BEEN AND WILL CONTINUE TO BE THE TARGET OF UNFAIR IMPORT COMPETITION

### A. Early Development of the Industry

In the 1960's and 70's, the production of color television receivers was seen as a high technology industry to which many Americans looked to provide the jobs of the future. Unfortunately, the Government of Japan had similar ambitions for its own consumer electronics industry. Today, with the benefit of hindsight, it is clear that the Government of Japan successfully adopted systematic policies for promoting its consumer electronics industry. The undeniable success of Japan's strategy certainly had much to commend it to new entrants to this business from other countries. The inability of U.S. trade policy to deal effectively with the challenge from Japan undoubtedly embolden producers from Korea and Taiwan to emulate tactics adopted first by the Japanese. Targeting policies similar to those of Japan were eventually adopted by Korea and Taiwan as well as by other Far Eastern countries.

Early efforts by U.S. firms to benefit from their technological superiority in the field of television by exporting to Japan were met with a stone wall. The market was closed to imports and foreign investment. It soon became clear that the only way that an American company could benefit from its technology in Japan was through licensing agreements with Japanese companies. The Japanese intended to have their own television industry and outsiders were not to have equity participation in that industry:

During its formative years, the Japanese television industry was protected not only from the unwanted participation by foreign companies in their domestic industry as investors, but from the importation of competing products as well. This isolation of the home market served two purposes. First, the Japanese industry was protected from outside competition during the period necessary for it to master the newly acquired technology. Second, the elimination of outside competition permitted the Japanese to establish a two-tiered pricing system -- one set of higher prices in the home market and one set of lower prices in export markets -- with profits from the home market used to fuel the eventual export drive into foreign markets.

This two-tier pricing strategy made possible by virtue of a closed home market, allowed Japanese manufacturers to incrementally price on world markets in order to buy market share and build volume to win the race down the learning curve. If you have a closed market at home, this is a perfectly rational business strategy. But, if your market is open, such as ours is, this strategy will lead to financial ruin. The internationally agreed-upon conventions against dumping are designed to address the imbalance created by closed markets abroad.

### B. The Initial Dumping Assault and the Orderly Marketing Agreements

After several years of increasing imports and sustained Japanese price undercutting, the Tube Division of the Electronic Industries Association filed an antidumping petition against Japan in 1968. Imports of color television receivers from Japan continued to rise steadily between 1968 and 1971 when a unanimous International Trade Commission determination of material injury resulted in the issuance of the antidumping order. During the first year of the order's existence, Treasury collected only token antidumping duties; thereafter it ceased enforcement of



the order altogether until early 1978. After an initial period of moderation following the 1971 dumping finding, imports from Japan began to climb again. In 1976, those imports reached 2.5 million units, two and a half times the level of the previous year.

The domestic industry and its workers responded to this devastating onslaught by organizing a coalition known as "COMPACT," The Committee to Preserve American Color Television. COMPACT sought relief from the President under the provisions of section 201 of the Trade Act of 1974. During the ITC hearing in this "escape clause" proceeding, representatives of the domestic industry argued that the consumer electronics industry made an important contribution to the nation's overall technological base by providing demand for electronic components as well as the vital cash flow to sustain R&D in basic electronics -- arguments that one often hears today in the context of the semiconductor industry and its interest in HDTV. On March 22, 1977, the ITC issued a unanimous affirmative determination in response to the petition, with four commissioners concluding that the domestic industry was being seriously injured and the remaining two commissioners finding a threat of serious injury.

In lieu of the remedies recommended by the Commission, President Carter negotiated a three-year orderly marketing agreement ("OMA") with Japan limiting annual imports from Japan to 1,560,000 complete receivers and 190,000 incomplete receivers. In each year of the OMA, however, imports from Japan failed to meet the restraint level. These shortfalls were directly traceable to belated efforts by the Department of Treasury in early 1978 to assess duties on five years of unliquidated entries of color television receivers. The prospect of renewed enforcement of the outstanding antidumping order caused imports of color television receivers from Japan to plunge between 1978 and 1980. The threatened imposition of antidumping duties undoubtedly discouraged Japanese producers from shipping all the color televisions they were entitled to under the OMA with Japan.

Unfortunately, the sharp reduction in imports of Japanese color televisions was not adequate to provide the domestic industry with the breathing space that it badly needed. Imports of color televisions from Korean and Taiwan quickly surged in 1977-78, leaving total import penetration in the U.S. market virtually unabated in those years. Also undermining the remedial effect of the antidumping order was the establishment of U.S. final assembly operations by each of the major Japanese television manufacturers (Sony in 1972, Matsushita in 1974, Sanyo in 1976, Mitsubishi in 1977, Toshiba in 1978 and Hitachi and Sharp in 1980.) The overriding purpose of these facilities was obvious: they allowed the Japanese manufacturers to assemble color televisions in the United States from imported parts and to sell those televisions outside the discipline of the antidumping order. Since neither television subassemblies nor picture tubes were covered by the order, these U.S. assembly operations effectively permitted the Japanese to continue dumping color televisions in the United States.

In response to the surges in imports from Korea and Taiwan, President Carter announced orderly marketing agreements with these countries in January 1979, with the restraints to run through June 30, 1980. The combination of the OMAs with Korea and Taiwan and threatened enforcement of the Japanese antidumping order by Treasury did cause import penetration in the U.S. color television market in 1979-80 to return to pre-1976 levels.

On January 2, 1980, Congress transferred the authority to administer the antidumping law to the Department of Commerce, largely out of dissatisfaction with Treasury's performance in enforcing outstanding antidumping orders, particularly that

applicable to color televisions from Japan. Unfortunately, Commerce's first act as the new administering authority was to announce (on April 28, 1980) that it had reached a settlement with numerous importers of Japanese televisions which substantially compromised liability for antidumping duties on entries through March 31, 1979 and dismissed certain ongoing fraud investigations. We have very good reason to believe that Commerce forgave several hundred million dollars in duties owed to the U.S. Government.

### C. The Attempt At Revocation

Shortly after the Commerce Department announced the settlement agreement, the ITC released its report recommending that the OMA with Japan not be extended and that the Korean and Taiwanese agreements be renewed for an additional two years. The Commission's primary reason for recommending against renewal of the OMA with Japan was the purported "rationalization" of the Japanese manufacturers' operations: the Commission saw the Japanese producers' U.S. final assembly operations as obviating the need for further large scale imports of complete receivers.

The ITC's rationale for recommending expiration of the OMA with Japan was not lost upon the Japanese manufacturers. Within a month of the expiration of the OMA, Sanyo (later joined by all of the other major Japanese manufacturers) petitioned the ITC for revocation of the antidumping order on grounds of "changed circumstances." Not coincidentally, the "circumstances" alleged to have "changed" were the nature of the U.S. and Japanese industries -- specifically, the Japanese manufacturers' establishment of final assembly operations in the United States and the allegedly "irreversible" decline in imports of complete receivers from Japan that such assembly operations would cause.

In response to brisk consumer demand and the expiration of the OMAs with Korean and Taiwan in mid-1982, Japan's exports of complete and substantially complete color television receivers to the United States virtually exploded, rising from approximately 700,000 units in 1981 to more than 4.3 million units in 1985. While this unprecedented surge lasted only until the fourth quarter of 1985, when the Plaza Accord led to a significant depreciation of the dollar vis-a-vis the yen, it did illustrate the Japanese manufacturers' strong determination to preserve their U.S. market share one way or the other. The surge also conclusively rebutted the argument advanced by Sanyo and the other manufacturers in support of their request for revocation of the antidumping order that the 1976-80 decline in imports of complete and substantially complete Japanese color television receivers was an "irreversible" trend. In point of fact, the decline was "irreversible" only for so long as the Japanese manufactures determined that it was to their competitive advantage to service the U.S. market through other means.

In part because of this renewed surge in Japanese CTV imports, the ITC eventually determined by a 3-1 vote that the domestic color television industry would be threatened with material injury if the outstanding antidumping order were revoked. The Commission majority's determination was bottomed on a finding that the domestic industry remained extremely vulnerable and on the absence of direct testimony from Japanese representatives as to the Japanese companies' intentions upon revocation. The majority identified several scenarios under which imports of complete Japanese color television receivers might increase, notwithstanding the presence of U.S.-based assembly facilities.

#### **D. The Antidumping Cases Against Color Televisions From Korea and Taiwan and the Picture Tube Cases**

Coinciding with the 1981-1985 surge in imports of complete televisions from Japan were equally pronounced surges in imports of complete sets from Korea and Taiwan. With the expiration of the OMAs in mid-1982, imports from these two countries rose dramatically, with 1983 imports from Taiwan more than double their 1981 levels and imports from Korea quadrupling over the same period. In response, members of COMPACT filed antidumping petitions against complete and incomplete color television receivers from Korea and Taiwan on May 2, 1983. After affirmative less-than-fair-value and injury determinations, antidumping orders against both countries were issued on April 30, 1984. The Korean and Taiwanese, like the Japanese before them, established or expanded already established U.S. final assembly facilities in response to the orders, and begun to expand exports of electronic components and picture tubes to the United States for assembly into complete color television receivers here.

In response to the continuing severe price pressure exerted by imports and sharp increased in picture tube imports, on November 26, 1986, members of COMPACT filed antidumping petitions against the four countries (Japan, Korea, Canada and Singapore) providing these "screwdriver" plants with their single most expensive component -- the picture tube. These cases, like all of their predecessors, resulted in affirmative less-than-fair-value and injury determinations, giving rise to antidumping orders on color picture tubes from the four countries in January 1988. Even before the orders issued, imports of picture tubes from the subject countries plummeted, falling from their all-time high of more than 2.3 million units in 1986 to less than 750,000 units in 1987. In 1988, total CPT imports fell to 274,000 units.

#### **E. The Current Situation**

The antidumping proceedings covering color picture tubes were, on the surface, among the most successful ever brought by a U.S. industry. Immediately following the filing of the four cases against Japan, Korea, Singapore and Canada the volume of CPT imports fell dramatically. Relief from dumping, however, proved to be elusive. Instead of shipping CPTs to the U.S., the foreign producers diverted their shipments to maquiladoras in Mexico where the CPTs are incorporated into CTVs that are then exported to the U.S. Today, Mexico has become the single largest exporter of color televisions to the U.S. All of the picture tubes that were being dumped into this country are now being dumped into Mexico, causing the same injury to U.S. CPT producers as when they were shipped directly. In addition, the same Japanese, Korean and Taiwanese producers found guilty of dumping CTVs and CPTs in the 1970s and 1980s have moved production plants to Southeast Asia and the Peoples Republic of China -- countries not covered by outstanding dumping orders. They are poised to launch another assault on the U.S. market.

Domestic interests filed a diversion petition with the Department of Commerce asking it to prevent the obvious circumvention of the CPT antidumping orders through Mexico. Commerce denied relief, holding that the petitioners did not satisfy the technical requirements of the anticircumvention provisions of the antidumping law. Ironically, those technical provisions were added to the law in 1988 in order to strengthen the Commerce Department's hand in dealing with problems of circumvention and diversion of antidumping orders. The domestic television industry



would have been much better off had Congress not tried to "strengthen" the law in 1988. The lesson here is obvious. Congress must proceed with great care when it amends the antidumping law because even so-called "technical amendments" can have unanticipated and very painful consequences.

### HISTORY OF ACTION AND EVASION

As you can see from this description, the history of the domestic television industry over the past twenty years has been characterized by action on the part of the domestic industry to offset injurious dumping, matched by evasion on the part of Asian suppliers. This endless cycle of action and evasion has cost the domestic industry millions of dollars in legal fees and hundreds of millions of dollars in lost sales.

The evasion tactics took the form of shifting set assembly operations around the world. In the 1970s, the Japanese manufacturers evaded the dumping orders on sets by exporting high value assemblies and color picture tubes to the United States for final assembly. They tried, unsuccessfully, to use the resulting inward foreign investment to argue that an "irreversible" decline in the level of imports, thus justifying a revocation of the dumping order. Fortunately, the ITC rejected the argument.

Then, in the early 1980's, when Korea and Taiwan manufacturers faced dumping orders, they too shifted up set assembly operations to the United States to evade the dumping orders on sets. Fortunately, the Commerce Department plugged this loophole with respect to the Koreans by expanding the scope of the dumping order.

Most recently, in the late 1980's, assembly operations were moved into Mexico to evade the dumping orders on color picture tubes imported from Asia. By importing a tube for assembly in a Maquiladora, the final product entering the United States was deemed a set for Mexico outside the scope of the dumping order on tubes. Today, Mexico accounts for over 55 percent of total set imports into the United States because of this evasion. Fortunately, we were able to include some provisions in the North American Free Trade Agreement ("NAFTA") which should help address this problem over time, but it continues to persist as we speak.

Now, we face the transfer of production facilities to South East Asia by Japanese and Korean manufacturers. These countries are not covered by existing dumping orders. Hence, these operations are a major threat to the U.S. industry.

### IMPLEMENTING LEGISLATION FOR THE URUGUAY ROUND

Corning is very concerned that the implementing legislation for the Uruguay Round will substantially weaken the discipline of the existing dumping statute. A major objective for Asian suppliers during these negotiations was to weaken the U.S. law. Faced with a disastrous Dunkel Text, Ambassador Kantor and his able staff pressed hard in the closing days of the negotiation to amend the most egregious portions of the Text.

As you know, Ambassador Kantor made a dozen or so proposals to improve the Text. We are grateful to him for his valiant effort. But, in the end, he had to compromise. Progress was made in agreeing to transparent procedures that should help U.S. exporters defend themselves against unjustified dumping actions by foreign governments. But, to achieve such progress, the United States had to agree to changes in the U.S. dumping law that will make it more difficult for petitioners to maintain their existing dumping orders and to avail themselves of relief in the future.

Obviously, the United States must implement its international obligations. But these obligations should be implemented in fashion so as to minimize their adverse consequences on domestic petitioners. Furthermore, where the new code gives the United States some flexibility, it should use that flexibility to strengthen the current law.

Domestic producers of television glassware and picture tubes must invest hundreds of millions of dollars in new production capacity in order to produce large screen HDTV sets. No careful businessperson would put these sums at risk while his basic business remained exposed to persistent injurious dumping. The future holds great opportunity, but that potential will never be realized unless Congress acts now to strengthen the antidumping law and secure the domestic industry and its workers from a repeat of the last twenty years of relentless dumping.

There are many proposals on the table to strengthen the antidumping law. Corning supports most of them. There are, however, a few proposals that are especially critical to the television industry which I would like to emphasize.

#### o SUNSET PROVISION

Article 11.3 of the Uruguay Round Agreement provides that "any definitive anti-dumping duty shall be terminated on a date not later than 5 years from its imposition . . . unless the authorities determine . . . that the expiry of the duty would be likely to lead to continuation of or recurrence of dumping and injury."

Implementing legislation should reflect that this provision has no effect on the administration of the antidumping law in this country. Article 11.3 applies by its own terms to the imposition of a "definitive anti-dumping duty." Definitive antidumping duties are imposed by a number of other signatories to the GATT who make a one-time calculation of the margin of dumping and impose a duty equal to that margin for the life of the antidumping duty order. This approach encourages respondents to enter into price undertakings and other forms of compromise and accommodation. By contrast, the U.S. antidumping law establishes an elaborate administrative apparatus for the conduct of annual reviews of antidumping margins. Definitive antidumping duties simply form no part of the U.S. antidumping scheme. Indeed, the U.S. approach works best when price changes in the foreign market, the U.S. market or both make the imposition of antidumping duties during a given review unnecessary.

The presence of a sunset provision makes some sense with respect to those antidumping regimes that impose definitive antidumping duties. Such a provision is entirely unnecessary with respect to countries like the United States where annual reviews take place. The plain language of Article 11.3 is clearly inapplicable to the U.S. antidumping law and no implementing legislation is required.

#### o CIRCUMVENTION AND DIVERSION

Current law permits the Commerce Department to include components otherwise subject to an antidumping order even when they are imported in another article of commerce, but only when the difference in value between the component and the finished article is "small." Commerce has interpreted this provision so narrowly that color picture tubes representing 40-60 percent of the value of a finished television set escape antidumping duties because the difference in value is not "small." Implementing legislation should include an amendment that substitutes a "significant value" test in place of the "small value-added" test in current law.

### o STANDING

U.S. law has long recognized the legal standing of labor organizations to file and participate in antidumping proceedings. Footnote 14 to Article 5.4 explicitly recognizes and tacitly approves of this practice. Implementation legislation should do nothing to disturb the standing of labor organizations under current U.S. law.

Article 5 establishes various conditions under which one or more producers in a given industry are able to file antidumping petitions. Implementing legislation should make it quite clear that in determining whether an antidumping petition has sufficient support among domestic producers, the views of organizations representing workers at individual production facilities cannot be canceled out if management at such a facility adopts a contrary view. Stated differently, affirmative support for a petition by either labor or management is sufficient to constitute the support of that production facility for the petition.

### o THIRD COUNTRY DUMPING

Article 14 of the Uruguay Round Agreement continues the provisions of Article 12 of the current antidumping code authorizing one country to bring a dumping proceeding at the request of a third country where an industry in that third country is being injured by dumping. No implementation legislation has ever been enacted to establish procedures under which U.S. authorities could initiate a dumping proceeding at the request of another country. This oversight should be corrected in the implementing legislation.

### o COMPENSATION

Under present law all antidumping duties collected by the Customs Service are paid into the U.S. Treasury with no provision for any monetary compensation to the injured domestic industry and its workers. In addition to demonstrating direct financial injury, domestic industries and workers typically spread hundreds of thousands of dollars in prosecuting antidumping investigations with additional expenditures for each annual review.

Amendments to the antidumping law that would permit domestic interests to receive compensation out of the duties collected would provide an entirely new and welcome dimension to the relief available under the antidumping law. Corning supports this approach strongly.

### o REPEAT OFFENDERS

The domestic television industry has been victimized by a few large multinational companies who have become habitual offenders under the antidumping law. The same multinational companies who were found responsible for dumping CTVs out of Japan and Korea have also been found dumping CPTs. Many of those same companies have shifted their CTV production to Mexico, Southeast Asia and the People's Republic of China in order to avoid the imposition of antidumping duties on their direct exports to the U.S. Our law must be strengthened to permit implementation of a swift and certain remedy to stop such habitual offenders.



AMENDMENTS CORRECTING FLAWS IN THE  
CALCULATION OF ANTIDUMPING DUTIES

Corning has reviewed a number of the proposals being offered by various domestic industries which are designed to eliminate loopholes and tighten-up the methodology for calculating antidumping duties. These include changes to adjustments in exporters sales price calculation, deduction of interest-selling expenses from foreign market value, dealing more effectively with two-tier pricing structures in the home market, overcompensation for duty drawback adjustments and the absorption of antidumping duties by foreign producers to name a few. Corning encourages the Committee to take advantage of this opportunity to correct identified deficiencies in the current antidumping law.

Chairman GIBBONS. Mr. Cannon is next on the list.

**STATEMENT OF JOSEPH A. CANNON, CHAIRMAN OF THE BOARD, GENEVA STEEL, ON BEHALF OF THE AMERICAN IRON AND STEEL INSTITUTE**

Mr. CANNON. Thank you, Mr. Chairman. And thank you for your patience and help not just today but over a lot of years.

Chairman GIBBONS. You pay me well.

Mr. CANNON. My testimony is on behalf of Geneva Steel and the 30 other U.S. steel companies of the American Iron and Steel Institute. All together this group represents about two-thirds of the steel—raw steel production—in the United States, and, again, we are grateful that you have given us the opportunity to testify before you today.

I won't go through the entire testimony but will be submitting quite a lot of comments over time in the next few days to your committee—

Chairman GIBBONS. All right.

Mr. CANNON [continuing]. Comments on specific agreements.

But let me talk to you specifically about why the laws against unfair trade are vital to the American steel industry. Your subcommittee has long recognized that as part of a progrowth and proinvestment economic strategy that America must have good, strong laws against foreign dumping and subsidies and other unfair trade practices.

The steel industry is a classic example of why we need this. Since the 1980s we have used these laws very substantially, and a lot of people in that time have thought this is a rust belt industry in decline. And yet the steel industry, because of the laws and internal practices, has come back. It is a very strong, very highly competitive industry.

Since 1980, we have invested over \$35 billion. As a result of that investment, we have more than doubled our labor productivity to world-leading levels. We are a very productive industry. It has come at a great cost to jobs and to plants in the United States, but it is now a highly productive, world-leading labor productivity steel industry. And we have won back market share from Japan and other competitors.

We have gone head to head with plastics and aluminum, two other competitors. We have moved into steel-frame homes, which is an increasing market in the United States. We have substantially increased our exports, and we have projected a different image because of our support for NAFTA, for example.

Along the way, we have become the reliable, low-cost supplier of steel to the United States. I will submit as part of my testimony a number of charts and graphs that show that.

But the fact of the matter is American steel companies are the low-cost suppliers of steel to the United States. We have restructured and revitalized the industry in the face of soaring health care, environmental and pension legacy costs and a number of other costs, not all of which are borne by all of our competitors.

We have also survived probably the worst capital cost recovery period for companies that fall within the alternative minimum tax.

I suggest that this is an important factor for us. What is the cost of capital to do the modernization that we need to do?

Against all this we have to struggle internationally in what, in many respects, is a mercantilist environment. Again, I will supply quite a lot of documentation as to that.

Our challenge in trade is having to deal with pervasive dumping of foreign steel, trade-distorting foreign trade cartels, more than \$100 billion in foreign government subsidies to steel since 1980, closed foreign steel markets. There are cases today where the price of steel is higher in some foreign markets and our costs are lower than their domestic producers and yet we have a difficult—indeed, in many cases, impossible—time getting our low-cost product into the high-priced markets. There is something that defies economic common sense about that.

The availability of antidumping and countervailing duty laws has helped us stay in the game—some of us stay in the game—in these last few years. I say some of us because, for example, Geneva Steel, our company, is the only integrated steel company in the western two-thirds of the United States. In 1980, there were four companies, large integrated steel mills in that same geographic area.

So dumping and subsidy is a threat to the viability of our industry. It is not that we are a bloated industry that has not paid attention to modernization and productivity, but we have had to face these strong odds.

We were already suffering injury due to dumped and subsidized imports—I am speaking of our company—we were losing money for the first time, and our plans to become a world-class steelmaker had to be put on hold during this last recession.

We had been forced to postpone the installation of a continuous caster of steel. They are an important part of the modernization process. We are finally able to arrange financing because of the competitive situation. The financing available has to come from the high-yield junk bond market, so our costs of capital are increased as a result of the competitive situation that we find ourselves in.

We ask you to consider the case of steel when those who want to continue to import dumped and subsidized products—when they come before you asking to do the absolute minimum when it comes to implementing GATT. We would ask you to look at our industry as an example of why it is important for us to have the trade laws that you have had in place over time.

We believe, as has been spoken of earlier, these laws have been weakened, to an extent, by GATT. We also understand that a negotiation is a negotiation, and our plea to you is simply don't give away more than we have already given away in the Uruguay round. Our plea is to do exactly what can be done within the context of the GATT and to do the maximum extent that we can do.

We just heard a lot of discussion about theology and all this other stuff. To give a real-life example of how the market views this: When the ITC came down differently than the Commerce Department came down, which found an average of 37 percent dumping margins in the steel industry, in the space of 90 minutes the value of all steel stocks in the United States declined by \$1.1 billion on Wall Street. In other words, the prices plummeted.



I remember being on the phone while I was on vacation, of calling in and hearing the results of this decision. And not a half hour later our own company lost 22 percent of its value on the stock exchange. That may sound like, well, so what? But the fact of the matter is the price of your stock has a lot to do with the availability of capital which is needed to modernize.

I won't belabor that.

In any case, I only want to say our plea to you is we would like you to enact the strongest possible antidumping and countervailing duty laws within the framework of the GATT and resist the temptation or the pressure to do the minimum.

We want free trade. I will speak for myself, but I believe I am generally speaking for all of AISI's U.S. members. We would like—and there is quite a lot of discussion in my testimony—a multilateral steel agreement. We would like to have open and free trade worldwide.

We are competitive. We can compete. We can compete with foreign companies and countries. I say countries because a huge percentage of the world's steel capacity is owned wholly or partly by countries themselves. But we can compete. We have gone through a terribly wrenching process domestically, but we can compete.

But until we get that multilateral steel agreement—until we get that—we need protection against predatory practices.

Thank you very much for your time.

Chairman GIBBONS. Thank you, Mr. Cannon.

[The prepared statement and attachments follow:]

TESTIMONY OF JOSEPH A. CANNON  
CHAIRMAN OF THE BOARD, GENEVA STEEL  
ON BEHALF OF THE AMERICAN IRON AND STEEL INSTITUTE

Thank you, Mr. Chairman. My testimony is on behalf of Geneva Steel and the 30 other U.S. member companies of the American Iron and Steel Institute (AISI) whose facilities, taken together, account for over two-thirds of America's annual raw steel production. We are grateful to the Subcommittee for giving us this opportunity to testify on the impact of the GATT Uruguay Round and its implementation on AISI's U.S. member companies.

My testimony will address (i) why effective laws against unfair trade are vital to the steel industry and (ii) what needs to be done in U.S. legislation to implement the Round.

This Subcommittee has long recognized that, as part of any pro-growth, pro-investment economic strategy, America must have good, strong laws against foreign dumping, subsidies and other unfair trade practices. Steel is a classic example of why. Since 1980, we have probably used U.S. antidumping (AD) and countervailing duty (CVD) laws more than any other industry and yet, contrary to reports in the mid-1980s of a "rust belt" industry in decline, America's steel producers are on the move.

We have invested over \$35 billion since 1980 and, as a result, we have: (i) more than doubled our world-leading labor productivity; (ii) won back market share from Japan and other foreign competitors; (iii) gone head-to-head with plastics and aluminum; (iv) moved into important new market niches (such as steel frames in home construction); (v) increased substantially our exports; (vi) projected a new image with our strong support for NAFTA; and (vii) along the way, become the reliable, low-cost supplier of quality steel products to the U.S. market.

We have restructured and revitalized our industry in the face of soaring health care and pension legacy costs, increasingly costly environmental regulations and the world's worst capital cost recovery period for companies that are Alternative Minimum Tax payers. And against this background, we must also compete in a mercantilist environment (described in charts attached to my written testimony). Our challenge on trade is having to deal with the pervasive dumping of foreign steel, trade-distorting foreign steel cartels, more than \$100 billion in foreign government subsidies to steel since 1980, closed foreign steel markets and U.S. trade laws that have not been fully enforced. Still, having the ability to use our AD/CVD laws to counter injurious foreign unfair trade practices has at least kept some of us in the game.

I say some, because Geneva is now the only integrated mill left in the Western two-thirds of the United States. In 1980, there were four. And in 1992, dumped and subsidized imports were threatening our viability as well. That is why we joined in the massive filings of flat-rolled unfair trade cases two years ago.

Geneva was already suffering severe injury due to dumped and subsidized imports. We were losing money for the first time, and our plans to become a world-class steelmaker were on hold. We had been forced to postpone installation of a continuous caster. And when we were finally able to arrange a financing package for a caster, it included \$135 million in notes with an interest rate of over 11 percent! With only one U.S. integrated producer having investment grade debt, we and all the rest are selling high-yield "junk bonds" to raise the capital to continue modernization. Twenty-five years of dumped and subsidized imports have helped drive up our cost of capital and made steelmaking in America a very risky business.

We therefore ask you to consider the case of steel when those who would like to continue to import dumped and subsidized products come to this Subcommittee seeking the absolute minimum needed to implement the GATT Round. Remember that the Commerce Department found that flat rolled steel was being dumped and subsidized in the

U.S. market at margins averaging 37 percent (or \$150 per ton) -- and that the petitioners, at a cost of tens of millions of dollars, got eventually only a mixed bag of injury findings by the U.S. ITC.

In the case of Korea's POSCO, a foreign competitor of major concern to Geneva, final margins ranged from 3.4 to 17.9 percent. But the ITC then let dumped and subsidized hot rolled and plate products off the hook due in good measure to the double and triple counting of sheet and strip products. The result? In the first 90 minutes following the ITC decision, the value of steel stocks on Wall Street decreased by \$1.1 billion, and Geneva lost 22 percent of its value that day. And in recent months, we are once again seeing a surge of below-cost imports flooding the market at an alarming rate. So don't let anyone tell you that our laws against unfair trade are biased against respondents. From a petitioner's standpoint, they were inadequate before the Round.

Thus, Congress had it right in 1988 when it made, as a key U.S. negotiating objective for the Uruguay Round, achievement of stronger disciplines against dumping and subsidies. Unfortunately, this goal was largely not obtained. Ambassador Kantor, Deputy USTR Yerxa, Commerce Under Secretary Garten and the pro-trade law members of Congress all helped to save U.S. trade laws from the disaster that the "Dunkel Draft" would have been, but let there be no misunderstanding: America's laws against dumping and subsidies have been substantially weakened by the Uruguay Round.

That is why both Congress and the Administration now face a choice: do we go back to our original objective for the Uruguay Round and try to preserve and enhance U.S. trade laws to the maximum extent possible, especially in light of the Round's trade law weakening results? Or do we instead make only the minimum number of changes needed to implement the Round, in spite of the trade law weakening results? AISI stands ready to work with you to make sure that the Uruguay Round and its implementation are in the best interest of our country. This can only happen if the Congress enacts the strongest possible antidumping and countervailing duty laws, consistent with our obligations under the GATT.

Because using trade laws is expensive and time-consuming, and relief is prospective only, we could start with a simple concept: let's provide injured U.S. companies and workers compensation, in the form of antidumping and countervailing duties collected. Within the next few days, we will submit for the record an attachment laying out some of the many ways in which U.S. laws against unfair trade stand to be weakened by the Uruguay Round. It will propose additional GATT-consistent solutions that would help make our trade laws as effective as possible.

#### Antidumping Law

Very briefly, in the antidumping area, as a result of the Uruguay Round's stricter standing requirements, changes in how margins are calculated, higher de minimis standards and a "sunset" provision that will make it even more difficult to make the necessary investments in steel modernization, U.S. cases will be (i) harder to bring, (ii) more difficult to win, (iii) provide less relief for a shorter period of time and (iv) cost more money for injured American industries and workers. In addition, the new Antidumping Agreement does not meet the Congressional objective of specifically covering diversionary dumping, dumped inputs and export targeting practices.

There are things that we can do, however, to help make our antidumping law as close to whole as possible. We can disallow the double-counting of "captive production," which has resulted in unjustifiable no-injury rulings. We can take the Uruguay Round's negligibility numbers and make them a "bright line" above which injury must be found. We can rebalance the sunset provision to create presumptions of when renewed injury is more likely. And we can look for further guidance to the Committee to Support U.S. Trade Laws (CSUSTL), of which AISI is a member, which has developed



scores of constructive, GATT-consistent proposals. We urge you to consider carefully these proposals and to make sure that as many of them as possible are included in the implementing bill.

#### Subsidies and Countervailing Duty Law

On the subsidy front, the U.S. obtained relatively little in the way of new disciplines -- a somewhat expanded list of prohibited subsidies and a new definition for "serious prejudice." In exchange, we lost our ability to pursue private subsidies, and got three new loopholes in the form of "green lights" that will make non-actionable subsidies for (i) research and "pre-competitive" development, (ii) regional development and (iii) environmental equipment. Because money is fungible and foreign governments have poured billions into steel, we are concerned about all three green lights. But given the continuing recessions abroad and the location of most foreign mills, we are especially concerned about the green light for regional development. In addition, the "financial contribution" language in the new Code could become a loophole, and the GATT still fails to address input subsidies and export targeting practices.

Again, the CSUSTL has developed GATT-consistent proposals that would help narrow the new green lights and make other positive changes so as to minimize the damage done to U.S. CVD law.

#### Dispute Settlement and Section 301

As for the GATT's new dispute settlement procedures, like many other U.S. industries, we are concerned that, henceforth, GATT panels (historically hostile to our trade laws) will have potential new authority to issue binding decisions that could overturn the dumping and subsidy laws passed by Congress. In addition, we are not convinced that Section 301 can continue to be used effectively. We appreciate Ambassador Kantor's statements that the U.S. will continue to use this key statute to open markets, and rely upon Administration commitments to do so.

In the end, however, we may need effective new measures to provide leverage to open foreign markets and to provide remedies against foreign cartels and other practices not subject to adequate disciplines under the new GATT rules. We will need to ensure that GATT panels are not allowed to engage in overly broad interpretations that place unwarranted limits on the ability of the United States to respond effectively to foreign unfair trade. We will need to make sure that the private parties affected by dispute settlement cases can be present at all proceedings. And in the dispute settlement area, too, we would urge that you look to the constructive proposals that are being offered by both the CSUSTL and the Labor-Industry Coalition for International Trade (LICIT).

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Our message, then, is one of great urgency. While the damage has been done, there is still much that we can do. But Congress must have the will to do it. Implementing legislation must provide for: (i) rebalancing U.S. laws against unfair trade by accepting Uruguay Round changes where necessary and minimizing the harm from negative provisions; (ii) taking advantage of GATT Round provisions not currently part of U.S. law and other affirmative measures not prohibited by the Agreement; (iii) closing loopholes in existing U.S. law and practice; (iv) eliminating incentives for avoiding AD/CVD orders through circumvention or diversion; and (v) simplifying the trade law process without prejudicing the results.

In sum, if we want to create and maintain good American jobs and a competitive United States economy, the legislation must go well beyond the minimum necessary to implement the Uruguay Round. We stand ready to work with you and to support you in every way to achieve this objective.

### Multilateral Steel Agreement and Steel Tariffs

Before I close, I would like also to say a word or two about the Multilateral Steel Agreement (MSA) and its relationship to the Uruguay Round. As you know, the MSA talks proceeded along a separate track from the Round, although the two negotiations dealt with many of the same issues (e.g., subsidies and market access) and, in the end, they were linked in the public mind by the official communication that came out of the Tokyo Economic Summit.

But when the Uruguay Round Agreement was announced seven weeks ago, the U.S. and other governments agreed that it just wasn't possible to achieve an MSA at that time. This was a major disappointment to us. The problem is easy to summarize: the parties remained stuck in a two-year impasse over such fundamental issues as whether there should be (i) any green light subsidies, (ii) extensive waivers from MSA subsidy disciplines and (iii) provision for antidumping law pre-initiation consultations.

We hope that a basis will soon exist to start the talks up again, because only an international steel agreement can address the root causes of world steel trade distortions: excess capacity, subsidies and toleration of private anti-competitive practices. As foreign economies such as Japan's have faltered, we have seen anti-competitive practices used to slam the door on market access. Such activity can be addressed through an MSA.

For our part, we are continuing to support, strongly and enthusiastically, the Administration's efforts to resume the negotiations on a new, more positive footing. We remain totally committed to achieving an effective, comprehensive and enforceable MSA that is "trade laws plus" -- an agreement that keeps our trade laws fully intact, plus ends subsidies, opens markets and eliminates cartel practices.

As you know, there was agreement in Geneva that the Uruguay Round results would include zero-for-zero tariffs on steel mill products. The steel industry's reaction to this has been a mixed one. While we welcome new market access opportunities abroad, we are concerned that (i) not all major steel-producing countries have agreed to go to zero and (ii) this is being done without an acceptable MSA being in place. We would urge that our government keep the pressure on by insisting that the parties keep the issue of continued steel tariff elimination under review, based on the progress made toward achieving an MSA.

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We are grateful to the Subcommittee for holding this hearing, and thank you for letting us testify on a subject of utmost importance to the U.S. steel industry.

# Foreign Governments' Involvement With Their Steel Industries

<u>Country*</u>	<u>Government Ownership</u>	<u>Government Control</u>	<u>Steel Import Limitations</u>	<u>Steel Industry Subsidization</u>	<u>Unfair Steel Trade Findings In U.S. since 1/1/82</u>
Japan	X		X		X
China		X	X	X	X
Germany	P	P	X	X	X
S. Korea	P	P	X	X	X
Italy	P	P	X	X	X
Brazil	P	P	X	X	X
India	P	P	X	X	X
France	X	X	X	X	X
United Kingdom	P **	P **	X	X	X
Canada	P	P		X	X
Spain	P	P	X	X	X
Czechoslovakia	X	X	X	X	X
Taiwan	P	P		X	
Belgium	P	P	X	X	
Turkey	P	P	X	X	X

Source: IISI, Steel at a Glance, 1991

* Ranked in order of 1992 steel production (ex. USSR)

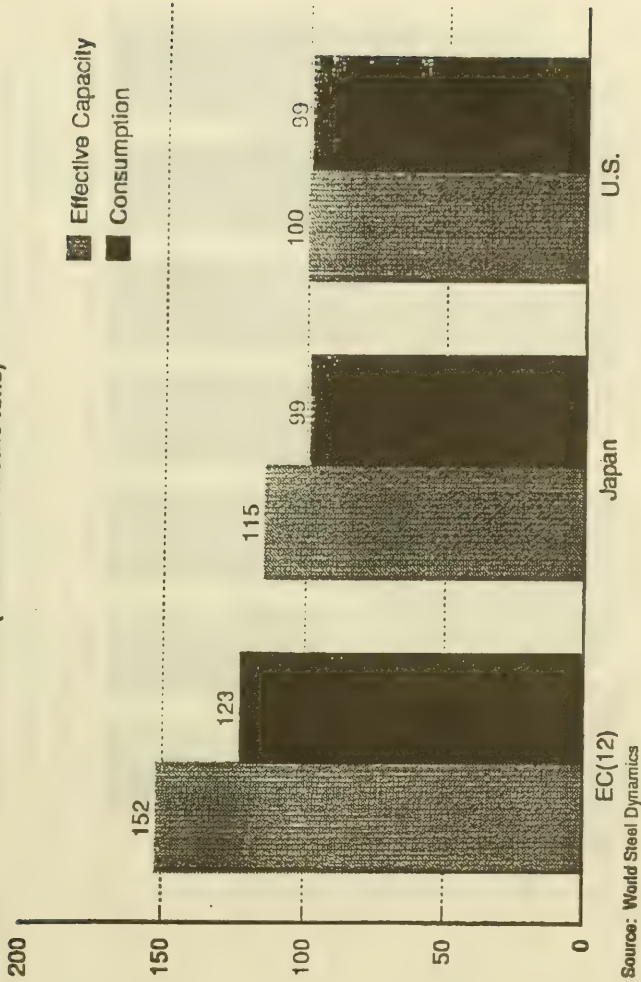
** British Steel privatized in late 1988 after 20 years of government ownership

P = Partial

There is no fair trade in steel mill products.



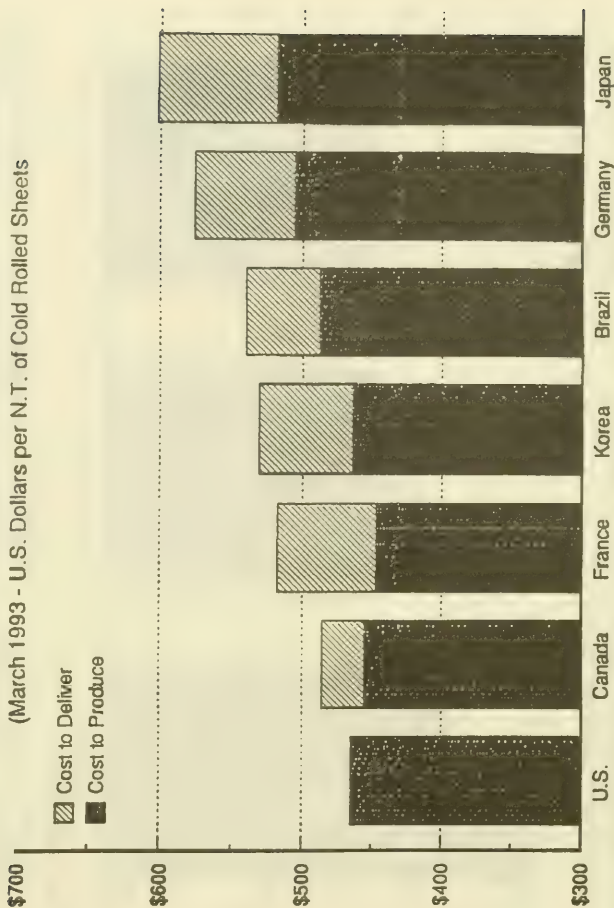
## 1992 Steel Capacity vs. Consumption (millions of metric tons)



The United States is the one major developed economy which has reduced its steel production and has capability near domestic requirements.

# Comparative Cost of Leading Steel Producing Nations to Deliver Steel in United States

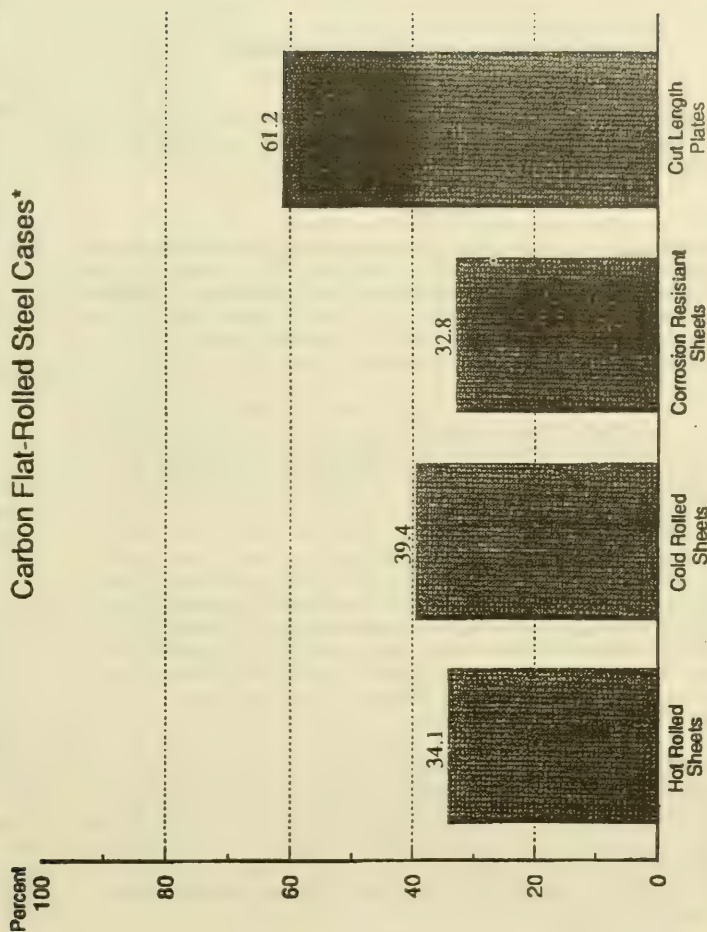
(March 1993 - U.S. Dollars per N.T. of Cold Rolled Sheets)



Source: World Steel Dynamics, U.S. Import Tapes 145

U.S. producers are currently the low cost, high quality producers for their home market. Many "high cost" world producers remain heavily dependent on exports to maintain volume.

# Combined Final DOC Antidumping & Countervailing Duties Carbon Flat-Rolled Steel Cases*



*Weight-averaged by estimated 1992 imports.

Fair and comprehensive Department of Commerce investigations confirmed the wide margins (an average of 37% or \$150 per ton) by which foreign producers are trading unfairly in all four product categories.



February 14, 1994

## THE TRADE LAWS MUST BE STRENGTHENED

The Uruguay Round implementing bill will be the most important piece of trade legislation since the last such bill 15 years ago. It will write the rules governing competition for at least that long into the future.

### Background

The Administration must do everything possible to strengthen these rules to the maximum extent permitted by the new Uruguay Round Codes. The domestic U.S. laws against unfair foreign trade activity are extremely important to the viability of America's manufacturing sector and the millions of workers in it. These laws have always been an essential part of the bargain that has enabled the U.S. Government to keep the U.S. market open even in the face of closed foreign markets abroad.

The trade laws are our industry's only defense against the massive foreign unfair trade practices that continue to cause us untold hardship. In its most recent investigation of flat-rolled steel products, the Department of Commerce found weighted-average subsidy and dumping margins of 37%, reflecting the \$100 billion in subsidies given foreign producers since 1980, endemic and massive dumping, and anticompetitive practices.

There are three essential trade statutes. The antidumping laws are designed to prevent foreign companies from engaging in unfair pricing in the United States. The countervailing duty laws prevent foreign governments from subsidizing their industries in ways that destroy U.S. companies. Finally, Section 301 is designed to give our government needed leverage to force our trade partners to grant our companies and workers access to their markets similar to that which they enjoy here. The combination of these three statutes permits American manufacturers to invest and become competitive in a fair world economic environment.

The international rules on which all three of these laws were based were weakened in the recently agreed upon Uruguay Round negotiation. Although the Administration and its negotiators managed to limit the damage, all were negatively affected. It will be more difficult in the future for U.S. companies to prove substantial dumping margins against our foreign competition. In the countervailing duty area, three injurious subsidies were made non-actionable for the first time. And in Section 301, we subjected our right to take action against foreign unfair practices to the decision of a panel of international bureaucrats.

Even so, the Uruguay Round, when taken as a whole, can be a net plus for the U.S. economy, if accompanied by appropriate implementing legislation that strengthens U.S. law to the maximum extent permissible under the new agreements.

### The Implementing Legislation

The Administration should act in every way consistent with our new international obligations to strengthen these U.S. laws against unfair trade. A number of refinements can be made in the dumping calculation to assure that accurate margins are determined. The new countervailing duty rules can be drafted to limit the amount of injurious subsidies which will go unchallenged. The law can be changed to assure that all members of the International Trade Commission fairly assess injury. Finally, a new market opening statute can be drafted to maintain the leverage which the U.S. Government needs to open markets abroad.

Following are only some of the proposals that are necessary to implement the principle that the unfair trade laws must be strengthened to the maximum extent permissible under the new GATT/WTO Codes:

**Dumping Calculation Issues:** The Antidumping Code requires changes to U.S. law in key areas that will reduce the ability of U.S. manufacturers to offset the full extent of dumping. Weakening provisions were included in areas such as averaging, profit in constructed value cases, the treatment of sales below cost, and start-up costs. As a result, strong implementing legislation is needed to contain the damage done and to clarify that U.S. law will be as strong as the current Codes allow. An example: Consistent with the new Code, the implementing legislation should apply the provisions on averaging to investigations only and not to administrative or sunset reviews and should adopt standards for determining a reasonable profit that ensure that dumping is offset to the fullest extent possible.

**Subsidies:** The steel industry is very concerned that the Subsidies Code will, unless accompanied by strong implementing legislation, permit injurious subsidies to go without offset. Provisions "greenlighting" regional aid and environmental subsidies, for example, should be interpreted as narrowly as possible or else are likely to become loopholes through which countries can pour large subsidies into their steel industries knowing the United States is helpless to act. Furthermore, consistent with the Code provisions, the U.S. law permitting subsidy loopholes should sunset after five years. Finally, a clarifying definition of "financial contribution" should be included in the implementing legislation to ensure that the range of countervailable subsidies is not unnecessarily narrowed.

**Injury:** The U.S. laws on injury should be written and administered in a manner no more restrictive of U.S. industry rights to offset unfair trade than is required under the GATT rules. Thus, for example, with respect to de minimis margins and negligibility provisions, the implementing legislation should ensure that the Commission will not permit unfairly-traded imports to be free from offset if not required to do so by the GATT.

**Sunset:** The new Codes require that orders against unfair trade be reevaluated after five years, even when the unfair trade practice has not ceased. The agency must determine that the dumping and/or injury is likely to continue or recur for the order to remain in place. This determination should be informed by standards that ensure that the five-year review does not lead to the unwarranted elimination of relief.

**Dispute Settlement:** By giving GATT/WTO dispute panels binding power to review the application of U.S. trade laws, the new GATT/WTO dispute settlement text constitutes a significant diminution in national sovereignty over trade disputes. U.S. negotiators procured a standard of review in the Antidumping Code requiring panels to uphold reasonable factual findings and reasonable legal interpretations of GATT/WTO obligations by U.S. administrative agencies. Unfortunately, the Subsidies Code does not include explicit standard of review language but is covered by a somewhat ambiguous ministerial declaration by the negotiators. The implementing legislation (or the Statement of Administrative Action) should state that U.S. agencies will not implement panel rulings that overturn reasonable factual determinations and reasonable interpretations of GATT obligations by the Department of Commerce and/or the International Trade Commission.

**Section 301:** The Statement of Administrative Action should make explicit the Administration's commitments to the Industry Policy Advisory Committee that the discretion of the U.S. Government to act against foreign unfair trade practices when necessary is preserved.

### Next Steps

The steel industry hopes to work closely with Congress (and the Administration) to draft implementing legislation that will strengthen the U.S. unfair trade laws to the extent permissible under the new GATT/WTO agreements.

Chairman GIBBONS. Mr. Comer.

**STATEMENT OF CLARENCE C. COMER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SOUTHDOWN, INC., HOUSTON, TEX.**

Mr. COMER. Thank you, Mr. Chairman.

Southdown is one of the country's largest cement-producing companies, operating 8 plants and serving regional markets in 24 states. Cement is a manufactured product and is the binding agent in concrete. As you know, concrete is used in virtually all construction projects and is literally the foundation of our society.

During the economic expansion of the 1980s, the U.S. cement-producing industry made a tremendous recovery. However, a massive intrusion of dumped foreign cement robbed the domestic industry and its workers of the benefits of this recovery. The surging volume of dumped cement depressed U.S. markets, grabbed market share and forced cement plants to close.

Foreign producers selling in the United States at prices well below those in their protected home markets were effectively engaging in international price discrimination. Through these practices, the foreign producers increased capacity utilization and maximized their profitability at the expense of the U.S. industry.

Dumping's double impact of lower prices and lost market share decimated domestic producers' returns on investment. Faced with inadequate returns, U.S. cement manufacturers could not generate or attract the capital required to modernize and expand the industry's productive asset base.

Southdown's Brooksville, Fla., cement plant is a case in point. As one of the most efficient plants in the United States, this facility is world class in terms of cost competitiveness. From its first full year of operation in 1977 to the cyclical peak in 1981, Brooksville generated a 20 percent return on assets.

Based on this investment performance and a favorable growth forecast in Florida cement consumption, a decision was made to double the plants capacity. Amazingly, Brooksville's return on assets fell to less than 5 percent after the startup of the new production line.

This abysmal postexpansion performance was a direct result of dumping, which occurred when independent terminal operators opened for business and began to purchase low-priced foreign cement. Using their dumped cement, terminal operators undercut domestic selling prices. As a result, the imports increased market share in Florida from 17 percent to over 50 percent from 1982 to 1985.

While dumping destroyed the profitability of the cement industry, consumption in Florida more than doubled by 1989. Such market growth would normally present expansion opportunities for the domestic industry. However, Southdown's experience with the effects of the first Brooksville expansion made a second expansion economically infeasible.

Obviously, a rational management cannot invest additional shareholder money in a facility which produces returns below those available on risk-free Treasury bills. The Florida cement industry lost this investment opportunity and its associated jobs because of



dumping and not because of a comparative advantage enjoyed by foreign producers.

The devastating impact of dumping on Brooksville and Southdown's other facilities led us to believe in 1989 that the cement industry had a bleak future absent some relief from these illegal trade practices.

At great expense, Southdown organized cement producers in the southern tier from Florida to California to file antidumping petitions. These producers successfully prosecuted petitions against Mexico and Japan and achieved a suspension agreement with Venezuela. As a result, imports from these countries have declined 80 percent and domestic cement prices and returns on investment have begun to rise.

The emerging recovery of the cement industry would not have been possible without strong antidumping laws.

Unfortunately, the new Uruguay round will require changes in our law that would represent a major step backward. I am here to urge the Congress to enact fair and balanced implementing legislation that preserves the effectiveness of our antidumping remedies. The goal should be to make our antidumping remedies stronger.

Our recommendations for implementation are discussed in detail in my written submission. However, I will briefly mention several major concerns.

First, we are very troubled by the sunset provision. Our industry lost four antidumping cases between 1976 and 1986. In the early 1990s, we have obtained relief from Mexico, Japan and Venezuela. Unfortunately, our industry now faces the legal expense, lost management time and uncertainty of sunset reviews on these outstanding orders.

Congress should implement the sunset provision to minimize costs and maximize the likelihood of preserving outstanding orders, particularly where dumping has been found to continue in administrative reviews.

The legislation should also take full advantage of the transition rules so that no outstanding orders are reviewed until 5 years after the effective date of the new agreement.

Second, in implementing the new dispute settlement rules, Congress should not relinquish its current responsibility for effecting change in the U.S. law. Adverse GATT panel decisions should not trump U.S. law.

Third, a valid measure of the domestic industry's ability to invest is whether its profits are sufficient to recover cost of capital. The ITC has been reluctant to assess this measure of an industry's health.

Implementing legislation should provide that, in assessing the impact of dumped imports in the United States, the negative effects on returns on capital will be considered.

Finally, we would like to ask the Congress to pay special attention to the difficulties faced by regional industries in combating unfair import competition.

In conclusion, we ask for a balanced bill that offsets the weakening provisions of the revised GATT Antidumping Code with strengthening provisions that provide an effective remedy against international price discrimination. American manufacturers and

workers need a strong antidumping law, and Congress should insist that it not be watered down by the Uruguay round agreement. Thank you.

Chairman GIBBONS. Thank you, Mr. Comer.

I am familiar with your operations at Brooksville. I look at it twice a week—coming and going—looking out the plane window. I have been closer to it than that though, I want you to know. I know something of the history of your situation.

[The prepared statement follows:]

THE URUGUAY ROUND IMPLEMENTING LEGISLATION  
SHOULD STRENGTHEN, NOT WEAKEN,  
U.S. ANTIDUMPING REMEDIES

Statement By Clarence C. Comer  
President And Chief Executive Officer  
Southdown, Inc.

Submitted With Respect To February 8, 1994  
Hearing Of The U.S. House Of Representatives  
Ways And Means Subcommittee On Trade

I. INTRODUCTION

The enactment of narrow legislation that merely implements the new Antidumping Code negotiated in the Uruguay Round would significantly weaken U.S. laws against unfairly traded imports. This, in turn, would result in a loss of U.S. manufacturing jobs and accelerate the ongoing process of de-industrialization of our economy, which has significant long-term social and economic consequences. The objective of Congress in drafting Uruguay Round legislation should not be merely to implement the weakening provisions of the new Code, but to stop the erosion of our industrial base by strengthening U.S. remedies against international price discrimination. Congress should counter-balance the Code-mandated weakening provisions of the Uruguay Round Agreement with strengthening provisions that are Code-consistent.

II. THE EXPERIENCE OF THE CEMENT INDUSTRY

The importance to the U.S. manufacturing sector of strong, effective remedies against unfairly priced imports is exemplified by the experience of the U.S. cement industry. A description of this product and the market is helpful to understanding the cement industry's story.

Cement is the binding agent in concrete. As an essential component of virtually all construction, concrete is literally the foundation of modern society. Depending upon economic conditions, the United States consumes from 70 million to 90 million tons of cement annually. The manufacture of the gray portland cement used to produce concrete involves the mining and crushing of large quantities of limestone. The crushed limestone is combined with smaller amounts of iron, silica, and alumina for grinding into a raw meal which is heated in rotary furnaces or kilns to temperatures of 2700 degrees. The resulting intermediate material, called cement clinker, is combined with gypsum and ground into the finished product, a fine gray powder.

Cement is produced to standards set by the American Society for Testing Materials. As a result, it is a homogeneous, fungible commodity. Because a cement producer's ability to differentiate its product is very limited, cement sells on the basis of price.

Demand for cement is closely tied to the construction cycle. At the peak of the construction cycle, the domestic cement industry has historically experienced strong demand, high capacity utilization, and increased prices. As the construction cycle reaches its trough, cement demand, capacity utilization, and prices have typically fallen.

The peaks and valleys resulting from the cyclical nature of the industry historically averaged out to provide the industry acceptable profits and returns on investment. Accordingly, the industry's performance through the late 1970's enabled it to generate or attract the capital required to modernize aging plants and equipment and to expand production capacity to meet growing demand.



Beginning in the 1980's, however, the dynamics of the cement industry were radically altered by the massive intrusion of dumped cement imported from Mexico, Japan, and other countries. The prices at which these countries sold cement in the United States were significantly lower than prevailing prices for cement in the exporters' protected home markets. Cement manufacturers from these countries were nevertheless able to profit from dumping by exporting otherwise unutilized production capacity to the United States at prices above their variable manufacturing costs.

The increasingly large volume of low-priced, imported cement altered the balance between supply and demand in the U.S. cement market by effectively creating a perpetual "excess supply" situation. During the robust economic expansion that prevailed from 1983 to 1989, cement consumption increased by 25 million tons, or 40 percent, over the previous cyclical trough in 1982. Because of the limitless supply of dumped imports, however, cement prices departed from previous historical patterns and actually declined during this boom in the construction cycle. In fact, prices for cement fell by approximately \$20 per ton in real dollar terms from 1980 to 1990.

In this severely depressed pricing environment, the economic condition of the domestic cement industry became so debilitated that, rather than following the historical pattern of expanding capacity during the upturn in consumption, the industry abandoned 9 million tons, or 10 percent, of its existing capacity. The number of plants declined 23 percent, from 142 in 1980 to 109 in 1990. The industry's return on investment was simply too low to economically justify the commitment of additional capital to new plants and equipment.

At Southdown, we realized that the economic viability of the industry depended on reversing the price depressing effects of dumped cement imports. Enlisting the support of other producers with plants located in the eight southern tier states, we filed our first petition against dumped imports of cement and cement clinker from Mexico in 1989. We did so with full knowledge that, despite the declining condition of the cement industry, domestic cement manufacturers had lost a series of previous antidumping cases, including major cases in 1976, 1978, 1983 and 1986. We believed that we had a compelling case to make. We also believed that, if the industry was willing to put capital at risk to manufacture a product as efficiently and cost effectively as it can be produced anywhere in the world, we should not be denied the right to survive and prosper simply because the trade laws had not been enforced in the past.

At tremendous cost, we prevailed. Cement producers secured antidumping orders against dumped imports from Mexico in 1990 and against dumped imports from Japan in 1991. An antidumping investigation of imports from Venezuela was suspended early in 1992 with an agreement by Venezuelan exporters not to sell cement and cement clinker in the United States at prices lower than their prices in Venezuela.

The results of these victories have been dramatic. The annual volume of imports from Mexico, Japan, and Venezuela has declined over 80 percent since 1989. Import prices have improved markedly. As a result, domestic cement prices have begun to rise across the country for the first time in over a decade.

The resurgence of the domestic cement industry is by no means complete, nor will it be easy. Because of the U.S. antidumping law, however, the domestic cement industry is again able to compete on a fair basis with imports from other countries.

### III. THE UNITED STATES SHOULD MAINTAIN STRONG REMEDIES AGAINST DUMPING

Although petitioning for dumping relief is a costly and uncertain course for domestic industries to undertake, the antidumping law can be a powerful corrective to unfairly priced imports when properly enforced. The United States needs to retain its full ability to remedy unfair trading practices.

The new Antidumping Code reflects the interests of Japan and other export-dependent countries whose manufacturers benefit from formal and informal import barriers that protect their home markets from foreign competition and permit them to engage in international price discrimination, that is, to export to the United States at lower prices than they charge in their home market. These countries influenced the outcome of the Uruguay Round negotiations through a well-financed lobbying and public relations campaign that portrayed antidumping remedies as protectionism for inefficiently operated, failing domestic industries.

The U.S. antidumping law, however, is anything but protectionist and does not serve merely to prop up aging and inefficient production. The experience of Southdown's cement plant in Brooksville, Florida, is an excellent case in point. The Brooksville plant is a world class facility that ranks as one of the lowest cost producers in the United States. During the construction boom of the mid to late 1970's, this plant generated pre-tax returns on investment of over 20 percent, which supported a doubling of the plant's capacity in 1982. The massive intrusion of dumped imports into the Florida market after the start-up of the new production line, however, caused cement prices to decline by over 28 percent from 1981 to 1988. As a consequence, the plant's pre-tax return on investment fell below 5 percent for the 1985-1989 period. It is truly an astounding state of affairs when a world class cement plant cannot even generate a return in excess of risk free Treasury yields in a market where demand has grown to more than twice the state's productive capacity. Efficient producers do not generate weak returns in strong markets when trade is truly free and unencumbered. The existence of international price discrimination is simply a sign of market failure when structural impediments to trade exist in the real world. The antidumping law is essential in these situations to prevent irreparable harm to our domestic industries.

The antidumping law provides a remedy only against unfairly traded imports, not fairly traded imports. If relief is effective, as in the cases involving cement imports, it will result in trade at fair prices. The free flow of fairly priced foreign goods is unimpeded. Because the antidumping law serves to deflect protectionist pressures away from U.S. lawmakers by providing an administrative remedy against unfairly priced imports, weakening the law would actually increase the likelihood that Congress would opt for protectionist measures in the future.

The antidumping law also does not sacrifice consumer benefits for protection of industries and jobs. The savings to consumers from purchasing dumped merchandise are merely transitory. In the long run, unfairly priced imports displace U.S. production, force reductions in domestic production capacity and industrial employment, and make U.S. consumers more dependent upon foreign sources of supply. As a result, U.S. consumers become vulnerable to supply disruptions and higher prices in the future.

It also should be pointed out that the antidumping law is procedurally fair to foreign exporting interests. Foreign companies and governments are permitted full participation in trade cases. Representatives of foreign interests are given access to all evidence that will be considered by U.S. agencies in making their decisions. These decisions are also subject to review by the Federal courts to ensure against errors of fact or law. For example, after several years of appeals, our August 1990 antidumping order against cement from Mexico has finally been affirmed by the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit. Our May 1991 order against cement from Japan is still on appeal.

The "disruption" to international trade asserted by foreign exporting interests is illusory in any event. Despite the immense volume of U.S. imports and the great variety of different goods being imported into the United States, few antidumping cases are filed each year. Moreover, statistics compiled by the U.S. Department of Commerce demonstrate that the majority of antidumping cases are decided against the domestic petitioners. Consequently, only a minuscule percentage of all imports into this country are subject to antidumping duty orders.

The U.S. cement industry has never sought to hide behind protectionist barriers. We welcome fair competition, both foreign and domestic. As the experience of the cement industry demonstrates, the continued competitiveness of the U.S. manufacturing sector can only be ensured if effective relief against dumped imports remains available. If the ability of the United States to counteract unfairly priced imports is undermined by the Uruguay Round implementing legislation, it will contribute to the further loss of domestic industrial capacity and manufacturing employment and the irretrievable de-industrialization of the U.S. economy.

#### IV. RECOMMENDATIONS FOR IMPLEMENTING LEGISLATION

Depending on how the implementing legislation is drafted, the new Antidumping Code could upset the hard-won relief obtained by the cement industry and other U.S. industries and could discourage other industries from even seeking relief. Many of the changes in the Code would clearly be harmful to the interests of U.S. manufacturers. Thus, the implementing bill must be drafted so as to strengthen the law in ways that do not contravene the Code. Discussed below are provisions of the Code of principal concern to the cement industry and our recommendations regarding legislation on those issues.

##### A. Sunset

Under current law, antidumping orders can remain in effect for as long as the dumping continues, unless the foreign respondents demonstrate that "changed circumstances" warrant the termination of relief. Under the "sunset" provision of the new Code, orders shall be terminated not later than five years from imposition, "unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." The Code further provides that "the duty may remain in force pending the outcome of such a review. . . . Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review." (Emphasis added.) Transition rules provide that existing orders "shall be deemed to be imposed on a date not later than" the July 1995 effective date of the Uruguay Round Agreement.



There are currently hundreds of outstanding antidumping and countervailing duty orders. If reviews of all outstanding orders had to be completed within twelve months, it would be extremely burdensome for the Commerce Department and the International Trade Commission to initiate reviews of all outstanding orders in the year 2000 and to complete those reviews within twelve months. The backlog of outstanding orders to be reviewed beginning in the year 2000 is not a normal situation and these old orders should constitute an exception to the Code's requirement that reviews "shall normally" be concluded within twelve months. Extraordinary interim procedures should be established that will apply until the backlog has been eliminated and until a normal, twelve month schedule can be established for future reviews. Under such interim procedures, old orders would be reviewed "expeditiously" commencing in the year 2000, as required by the Code, but obviously not all orders could be reviewed within twelve months as contemplated by the Code in "normal" cases.

The implementing legislation should:

- (1) Provide that antidumping and countervailing duty orders outstanding as of the July 1, 1995 effective date of the Agreement shall be deemed to have been imposed as of July 1, 1995;
- (2) Provide that no antidumping or countervailing duty order outstanding as of July 1, 1995 shall be terminated pursuant to the new sunset provision any sooner than July 1, 2001;
- (3) Give domestic industries five years from imposition (until a reasonable period of time preceding July 1, 2000 for orders in effect as of July 1, 1995) to request reviews of antidumping and countervailing duty orders;
- (4) Provide that the Commission shall initiate sunset reviews on its own initiative upon the receipt of a simple certified request from one or more domestic producers of the like product or from one or more unions representing workers who produce the like product;
- (5) Provide that liquidation of entries shall be suspended pending judicial review of sunset determinations adverse to the domestic industry;
- (6) Confirm that continuation or recurrence of dumping or subsidization shall be presumed where dumping is found in an ongoing administrative review or was found in either of the last two administrative reviews preceding the sunset review;
- (7) Confirm that continuation or recurrence of injury (or threat of injury, if that was the basis for the order) shall be presumed absent a substantial change in circumstances that is unrelated to the imposition of the antidumping duty order. The fact that dumping margins have declined, that imports have declined, or that the health of the domestic industry has improved are circumstances that are generally expected to flow from antidumping and countervailing duty orders; and
- (8) Provide that the sunset provision shall not apply to antidumping orders and countervailing duty orders imposed against non-GATT countries (such as the People's Republic of China) or against GATT countries that have not signed the new codes.

## B. Regional Industries

The cement industry is regional in nature. Cement's low value-to-weight ratio ensures that it is rarely shipped more than 200-300 miles from the manufacturing plant. Consequently, antidumping investigations involving cement imports have almost always involved a regional domestic industry.

Restrictive agency interpretations of current law have made it exceptionally difficult for petitioners to prevail in regional industry cases, even where regional producers are clearly adversely affected by unfairly traded imports. Congress should use the implementing bill to correct erroneous past interpretations of the antidumping law relating to regional industries and to ensure that the amendments to the Antidumping Code are not interpreted so as to unfairly disadvantage regional industries.

(1) Sunset: With respect to antidumping orders imposed on behalf of regional industries, the implementing legislation should provide that orders shall not be terminated if expiration of the order would be likely to lead to continuation or recurrence of injury or threat of injury to producers either in the region as defined in the original investigation, in one or more different regions, or in the nation. The fact that imports have been redirected to other regions or that the boundaries of isolated regions have changed are circumstances that are generally expected to flow from antidumping and countervailing duty orders.

(2) Standing to petition on behalf of a domestic industry: The new Code will require changes in the way the Commerce Department currently determines if a petition is filed "by or on behalf of the domestic industry" prior to initiating an investigation. In regional industry cases, the legislation should provide that the requisite support shall be assessed on the basis of production in the region as defined in the petition.

(3) Cumulation of imports: The legislation should clarify that, in regional industry investigations, the Commission shall cumulate those imports subject to investigation that compete with each other and with the domestic like product within one or more of the regional markets at issue.

(4) Negligible imports: The new Code provides that an investigation shall be terminated where the volume of imports, actual or potential, is negligible. "The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing country unless countries which individually account for less than 3 per cent of the imports of the like product in the importing country collectively account for more than 7 per cent of imports of the like product in the importing country." The implementing legislation should provide that in regional industry cases the 3 and 7 percent thresholds apply to the share of imports into the region or regions subject to investigation rather than the share of imports into the nation.

(5) Concentration of imports: The law currently requires that, before the Commission may find injury to a regional industry, it must find that the dumped imports are concentrated in the region. The legislation should clarify the intent of Congress that "concentration of subsidized or dumped imports exists with respect to a market if the percentage of subsidized or dumped imports to consumption of imports and domestically produced like products in such market is clearly higher than the percentage in the rest of the United States." It should further provide that post-initiation changes in distribution of subsidized or dumped imports shall not result in

a determination of lack of import concentration where the distribution of imports at the time of filing would support a finding of import concentration.

### C. Dispute Settlement

Under the existing Code and dispute settlement rules, a foreign country can seek review by a GATT dispute panel of a U.S. dumping or injury determination, but panel determinations are not adopted by the GATT Antidumping Code Committee unless accepted by the United States. Even if a dispute panel's decision is adopted by the GATT upon the Executive Branch's acceptance of an adverse panel report, an act of Congress is required to invalidate an antidumping order and to make prospective changes in U.S. law.

The cement industry's first-hand experience with the GATT dispute settlement process is instructive. The Mexican Government challenged the U.S. antidumping order on Mexican cement under procedures provided in the GATT Antidumping Code. The industry incurred considerable expense defending its interests against Mexico's politically motivated GATT case. Predictably, the GATT panel's July 1992 report was adverse to the United States and the U.S. cement industry. The panel based its decision on the conclusion that the U.S. Commerce Department should have determined, prior to initiating the investigation, that the antidumping petition was supported by the domestic industry. This result is not compelled by the language of the Antidumping Code, is contrary to U.S. law and practice, and was never argued to the Commerce Department by the Mexican exporters. In effect, the panel ruled that Commerce has never properly initiated an antidumping or countervailing duty case in compliance with the Antidumping Code. Under the current rules of the GATT, the GATT panel decision has not been adopted by the GATT Antidumping Code Committee, because the United States has not accepted the decision.

Under the new Code, determinations of dispute panels or Appellate Bodies will be automatically adopted by the World Trade Organization ("WTO"). The Agreement, however, does not dictate how such decisions shall be implemented by the United States. Although the Agreement provides that "prompt compliance" is essential to ensure effective resolution of disputes, it further provides that fifteen months should generally be considered a reasonable period of time to implement panel recommendations.

The implementing legislation need not address the new dispute settlement rules, which only concern how GATT panel decisions are adopted under GATT. Congress might choose to implement any adverse GATT panel decisions on an ad hoc basis, as is its current practice. In addition, GATT panel decisions should only be implemented prospectively; they should not affect outstanding orders except with respect to the calculation of dumping margins in subsequent reviews.

Alternatively, the implementing legislation might:

- (1) Retain for Congress the responsibility for implementing GATT panel decisions;
- (2) Require the Commission and Commerce Department to review any of their decisions found by a GATT panel to violate the Antidumping or Countervailing Duty Code and recommend what action, if any, is required to bring the decision into compliance with the panel report;



(3) Require USTR to provide an annual report to Congress recommending any changes to U.S. law and practice required to bring the United States into compliance with GATT panel decisions issued during the preceding year and incorporating recommendations from the Commission or Commerce relating to adverse panel decisions in antidumping and countervailing duty cases; and

(4) Confirm that GATT panel decisions do not trump U.S. law and practice and have no precedential value for the interpretation of U.S. law by the Commission, the Commerce Department, and the U.S. courts. Our laws and practices should be amended by the Congress, not by GATT dispute panels.

#### D. Standing

The new Code will require changes in the way the Commerce Department currently determines if a petition is filed "by or on behalf of the domestic industry" prior to initiating an investigation. The implementing legislation should:

(1) Confirm that production by "related parties" that do not support the petition (*i.e.*, companies that are related to the foreign producers or that import products subject to investigation) shall be excluded in determining whether the requisite support exists for the petition;

(2) Confirm that an affirmative statement of support by a union or other worker group in any company shall constitute support for the petition by that company; and

(3) Confirm that in regional industry cases the requisite support shall be assessed on the basis of production in the region as defined in the petition.

#### E. Assessment Of Material Injury And Threat Of Injury

(1) Cumulation: The new Codes confirm the U.S. practice of cumulating imports subject to antidumping investigations and of cumulating imports subject to countervailing duty investigations. The implementing legislation should (a) Confirm that the Commission shall "cross-cumulate" dumped and subsidized imports subject to investigation; (b) Codify the ITC's practice of cumulating imports subject to a recent order and obviate uncertainties and difficulties of proof by providing that the ITC shall normally cumulate unfairly traded imports where the prior order was issued within a year of the ITC's vote in its current investigation; and (c) Clarify that, in regional industry investigations, the Commission shall cumulate those imports subject to investigation that compete with each other and with the domestic like product within each regional market.

(2) Multiple investigations of the same product: For some products, antidumping relief is less effective because, after an order is imposed against imports from one country, other countries begin exporting dumped products and prevent the domestic industry from receiving the expected benefits of the order. The implementing legislation should provide that in any investigation involving a like product on which an antidumping order or suspension agreement is in effect, the Commission should assess whether the volume and price effects of the imports under investigation have prevented the domestic industry from enjoying the full benefits of the outstanding order or suspension agreement.

(3) Cost of capital: A valid measure of a domestic producer's ability to invest is whether its profits are sufficient to recover its cost of capital. The ITC, however, has been reluctant to assess this measure of an industry's health.

The implementing legislation should provide that in assessing the impact of dumped imports on an industry, the Commission shall assess the actual and potential negative effects of the dumped imports on the industry's ability to earn profits sufficient to recover its cost of capital.

(4) Effect of suspension agreements on final determination: The legislation should provide that the Commission shall not consider as a factor supporting a negative determination any decrease in imports subject to investigation or any improvement in the condition of the domestic industry which occurred after a suspension agreement became effective. Similarly, it should provide that Commerce shall not consider as a factor supporting a negative determination any decrease in FMV or increase in United States price which occurred after a suspension agreement became effective.

#### F. Calculation of Dumping Margins

(1) Deduction of profits from exporter's sales price: All of our trading partners deduct related importers' profits when calculating export value, but the United States does not. Current practice overstates exporter's sales price and understates the true margin of dumping by failing to deduct a reasonable amount for profits earned by the importer. This results in related party importers being treated more favorably than unrelated importers. The legislation should correct this flaw by requiring that a reasonable profit be deducted from exporter's sales price, equal to the profit normally earned by unrelated importers.

(2) Deduction of indirect selling expenses from foreign market value: Under current practice, the Commerce Department deducts from foreign market value ("FMV") indirect selling expenses incurred in the home market, whenever United States price is based on exporter's sales price. In effect, this practice negates the deduction from exporter's sales price of expenses uniquely incurred when the merchandise is sold in the United States. This practice is not required by the Antidumping Code and is not followed by our trading partners. The implementing legislation should preclude the deduction of indirect selling expenses from FMV to offset expenses deducted from exporter's sales price.

(3) De minimis margins or subsidies: Under current U.S. law, an antidumping or countervailing duty order may be imposed if the Commerce Department determines that the dumping or subsidy margin is at least .50 percent. The new Codes increase the de minimis threshold to two percent in antidumping investigations and to one percent in countervailing duty investigations. The implementing legislation should confirm that the changes in the de minimis thresholds apply only to new investigations, not to administrative reviews.

(4) Price averaging: Under current law, the Commerce Department determines a dumping margin by comparing the weighted average price for all of the foreign producer's sales in its home market with the price of each of that producer's sales to the United States. A dumping margin will result if some individual U.S. sales are below the weighted average FMV, even if the average U.S. price is no lower than FMV. The new Code would generally require a dumping margin to be based on a comparison of a weighted average FMV to a weighted average U.S. price or on a comparison of FMV and U.S. price on a transaction to transaction basis. This Code change applies only to new investigations, not to administrative reviews. The implementing legislation should confirm that the change does not apply to administrative reviews.

In addition, the legislation should provide that U.S. price shall be determined for each transaction and compared to a

weighted average fair value where there is satisfactory evidence that U.S. prices vary significantly (normally by five percent or more) among different purchasers, regions, or periods of time.

(5) Profit for constructed value: The new Code limits the amount of profit that can be used in constructed value to the actual profit on "production and sales in the ordinary course of trade of the like product" of the producer under investigation. When that amount cannot be determined, profit may be determined on the basis of (a) the actual profit experienced by the producer on the "same general category of product," (b) the weighted average profit realized by other producers subject to investigation, or (c) any other reasonable method. Profit, however, is capped by the amount of "profit normally realized" by other producers in the country of origin on products of the "same general category." The implementing legislation should ensure that the lack of profit in below cost sales situations does not reward respondents in constructed value situations. Alternative methods should be used where enough home market sales have been disregarded as below cost to require the use of constructed value. For example, one reasonable alternative method would be to use the amount of profit sufficient to recover the cost of capital in the country of exportation. In no case should profit calculations include below cost sales.

#### V. CONCLUSION

The new Antidumping Code negotiated in the Uruguay Round Agreement has the intent and the effect of weakening U.S. remedies against unfairly priced and unfairly subsidized imports. While the legislative changes needed to implement the Uruguay Round Agreement will necessarily weaken some aspects of U.S. antidumping and countervailing duty remedies, those changes can and should be counter-balanced by legislation to strengthen other aspects of existing law in ways that do not contravene the new Codes. A balanced bill will implement the Uruguay Round Agreement and maintain the effectiveness of U.S. unfair trade laws.

Shifts in trade flows should only stem from comparative advantage and not from international price discrimination. Effective remedies against unfair trade provide the economic and political predicates for international trade liberalization. Without the preservation of effective remedies against dumping, the Uruguay Round Agreement is not in the best economic interest of the United States.



Chairman GIBBONS. Very interesting testimony, all of you.

Let me ask you, Mr. Smith, is the high definition television going to be flat-screened, too?

Mr. SMITH. It won't be quite flat-screened. It is going that direction. It will probably be—instead of a 3 to 4 ratio, which is basically your screen today, it will be more like Cinemascope which will be a 16 to 9 ratio, more like a movie screen.

Chairman GIBBONS. And when you say glass you are talking about what we see as the tube minus the picture.

Mr. SMITH. That is right. We provide the envelope or the bulb, as you say.

Chairman GIBBONS. You supply the envelope.

Thank you very much, gentlemen.

Chairman GIBBONS. We will go to Mr. Gridley next. I am not sure what you produce, sir.

Mr. GRIDLEY. I am the ball bearing fellow.

Chairman GIBBONS. All right, good. Let's go with you first.

**STATEMENT OF DAVID D. GRIDLEY, DIRECTOR OF SALES,  
TORRINGTON CO.**

Mr. GRIDLEY. Mr. Chairman, I am David Gridley, director of sales of the Torrington Co. in Connecticut. I am here on behalf of the Torrington Co. Inc. and want to thank the Chairman and the subcommittee for this opportunity to testify concerning the results of the Uruguay round.

Although the round offers numerous opportunities for business today I wish to concentrate on the implications of the round for the U.S. antidumping and countervailing duty laws, laws which many U.S. industries have found critical to their battles to remain competitive.

The Torrington Co. has been a petitioner and active participant of numerous antidumping and countervailing duty cases in the United States. Torrington is the world's leading producer of needle roller bearings and has the largest full line of antifriction bearings in the United States.

Torrington began as a producer of needle roller bearings used primarily in automobiles, outboard engines, aerospace applications. In the 1980s, Torrington acquired Fafnir Bearing of New Briton, Conn., and was the leading U.S. producer of ball bearings. The company, headquartered in Connecticut, operates facilities producing super precision bearings for aerospace and other critical applications and commodity bearings in plants and various parts of the United States, primarily in South Carolina, Georgia and North Carolina.

The company also has a number of foreign manufacturing facilities and foreign joint ventures. We are not just a domestic operator.

Seven companies dominate the world production for bearings, each with plants in multiple countries. These companies include SKF, FAG, INA, NSK, NTN, Koyo and Minebea.

SKF, FAG and INA are headquartered in Europe and have plants in many European countries. In addition, they also have plants in South America, North America and Asia.

NSK, NTN, Koyo and Minebea are headquartered in Japan and have plants in various countries including Brazil, Korea, Canada,

Singapore, Thailand and/or Taiwan as well as in the United States and Europe.

In the 1980s, all of these companies were aggressively dumping in the U.S. market in a battle for increased market share. Torrington Co. and other U.S. producers were caught in the cross-fire between the European and Japanese giants battling for control of this market. As a consequence, many U.S. producers were forced to close factories, slash work, and reduce R&D and capital expenditures. Some went out of business. Others merged and some sold out at distressed prices to the foreign producers who were cutting the price.

In all, more than 30 plants were closed, and 13,000 workers lost their jobs. There was a capital disinvestment of over \$1 billion.

The U.S. industry was forced in many instances to focus on specialized applications. With reduced volume, U.S. producers could not fund the R&D to keep pace with European and Japanese producers. Dumping by those producers thus caused long-term injury and significant structural changes in the industry.

Unable to sell high-volume bearings at prices sufficient to cover cost and with a shrinking sales base to absorb overhead expenses, the industry found itself faced with increased unit cost on its remaining products. This not only caused plant closure and layoffs but caused many producers to fall behind in the development of new technologies.

In response to the extreme price depression, Torrington, on behalf of the domestic industry, filed antidumping and countervailing duty cases against nine countries in 1988. The dumping margins found by the Commerce Department in the original 1988 investigation were on the average 60 percent and in many cases over 100 percent.

In response to the antidumping and countervailing duty orders there were a number of responses by the foreign producers. Some engaged in fairly massive game of circumvention for a period of time. Some raised selected prices. Some increased investments in the United States and continued to sell at extremely depressed prices. And nearly all continued to dump merchandise in the U.S. marketplace one way or the other.

Nevertheless, faced with at least a partial price relief, U.S. companies like Torrington have reinvested large sums to add back capacity in plants that were closed and to upgrade facilities. Overall, the investment in the U.S. bearing industry has been over \$1 billion in the last 5 years, offsetting the billion loss in the beginning of the 1980s.

Much of the new investment has been threatened by dumping from additional sources, by the continued dumping from the nine countries and by foreign producers' willingness to sell below cost out of U.S. facilities.

Nonetheless, the continued viability of the U.S. antidumping and countervailing duty law remain critical to the U.S. bearing industry. As imperfect as existing laws, regulations and administration are, the orders have permitted the industry to survive. There is no question of that.

Eliminating the loopholes, eliminating incentives to evade the order and assuring that, in fact, the law provides a level



playingfield for domestic producers must be the objective of our legislative process.

First, I would like to extend my appreciation to Ambassador Kantor and his team at the USTR and Under Secretary Garten and his team at Commerce for the significant improvements in the antidumping provisions accomplished at Geneva. The original Dunkel draft was totally unacceptable.

A draft agreement that has been described as a bad deal by the prior U.S. negotiators was rendered less objectionable by the hard work and determination of the U.S. team.

Nonetheless, the Uruguay round results have the potential to make U.S. antidumping and countervailing duty laws more difficult and expensive to use and to provide less relief for shorter periods. Such an outcome is not required, but will result if the administration focuses on the minimum needed to adopt the Uruguay round. The minimum in these areas would reflect changes which weaken U.S. laws. The objective on the laws should be to adopt the strongest trade laws that GATT permits and stay close to our existing laws.

For example, changes in sales below cost methodology will certainly reduce dumping margins. Increased de minimis margins, a fourfold increase from  $\frac{1}{2}$  of 1 percent to 2 percent—which doesn't sound like much—roughly is half the U.S. normal profitability for corporations. This will reduce the relief available.

Similarly, a need to analyze foreign producer data to submit the justification for the deviation from weighted averages will increase costs for domestic users as will increased complexity of determining the constructed value.

Sunset reviews every 5 years—which in the United States will occur only because of continued dumping by foreign producers. And what we refer to there is the administrative reviews that we have today, if someone stops dumping they are out of the dumping order anyway. But, in this case, even though they are not out of the dumping order, they are reviewed after 5 years.

This will significantly add to the cost of obtaining relief and will significantly increase the uncertainty associated with reinvesting following affirmative findings of dumping and injury. These and many negative aspects of the Uruguay round will undoubtedly be included in implementing legislation or in regulations or practice.

We fought hard to eliminate negative aspects in Geneva. Neither the Congress nor administration should be pursuing a strategy of not maintaining the benefits obtained or maximizing the rebalancing permitted by the new text.

I believe the Torrington Co. experience is typical of U.S. companies who have found the need to seek relief from unfair trade practices abroad. We need strong trade laws that work. I believe the United States can adopt changes that will be consistent with GATT obligations, that nonetheless will significantly reduce the negative aspects of this agreement.

Let me provide a few examples here.

The United States insisted existing antidumping findings and orders be treated as coming into effect for sunset reviews on the date that the World Trade Organization comes into effect. Implementing legislation should safeguard the result—hence reducing the dis-



incentives to reinvest. They said there would be a 5-year transition period. There should be a 5-year transition period.

The United States should, consistent with our international obligations, adopt procedures for sunset reviews that minimize the amount of time and effort required for participation, properly obtain and verify information—particularly pertaining to foreign producer shipments and capacity—and adopt constructions of the key terminology—likely to continue or recur—to achieve reasonable results in light of the continuing dumping practice.

In our particular case, the average dumping margins now are in the range of 17 to 18 percent, down from 60 percent at the original case.

In my view, I can't see why that order would go away. Seventeen percent is a substantial amount of dumping. We would like to have the process of proving that minimized.

The statutory language or U.S. International Trade Commission practice should be modified to make relief available earlier, if relief is likely to be shorter lived, that is, 5 years.

Relief provided should be effective. Many issues prevent it being so at the present time:

One area is the subject of compensation. The overly restrictive injury constructions result in industries being behind by the time relief is granted. Compensation, not prohibited by GATT, is not provided to redress the actual condition of the industry.

In our case in the bearing industry, over \$1 billion of capacity was closed, and you can't reconstruct that plus the financing involved in only a 5-year time period.

Eliminate incentives to evade the antidumping duty orders or minimize relief. Foreign producers and their importers are provided a series of incentives to evade antidumping and countervailing duty orders or to reduce the margins of dumping and subsidy sayings found.

For example, because ultimate liability depends on the merchandise being unliquidated, not cleared through Customs, there are many efforts taken by foreign producers to have exports classified under HTS numbers that will be not caught by the Customs Service, i.e. auto parts, transmissions, steel forgings, and permitting those entries to escape liability regardless of the dumping.

Similarly, premature liquidations by Customs is viewed by the agencies as noncorrectable. If it is liquidated, you can't go back and get it. Liability should continue for importers until all entries properly the subject of the antidumping duty order are identified and reviewed.

So, too, there are a series of artificial walls that can permit manipulation of the data and prevent problems being spotted and quickly corrected.

My counsel informs me that information received under administrative protective order cannot be used in subsequent administrative reviews. If you have a review for a certain period from 1990 to 1991, that information has to be wiped out and cannot be used in the review from 1992 to 1993, increasing costs, and increasing the burden.

Nor can information from the same company located in different countries be used to check for reasonableness on other responses.

You have one company who has a factory in France and another in Germany. You can't compare the data under the administrative protective order.

Nor can importers' files at Customs be accessed under APO by Commerce, nor can concerns raised by the APO submissions at Commerce be communicated to Customs by the counsel. In other words, Customs may not be collecting the duty, but they found it out during the APO investigation. They cannot tell Customs this.

Such artificial walls can permit gamesmanship to go undetected, reducing the effectiveness of the orders.

The relative ease of converting countervailable subsidy programs into nonspecific subsidies—hence not actionable—has gutted the countervailing duty laws for most industries.

In Torrington's case, a press account, after the orders, indicated that one of the foreign producers had approached the government to have four words deleted from the existing statute so that the same benefit to the same companies would no longer be actionable. This refers to Thailand, I believe.

The biases in current administration, not required by the GATT, that favor related party transactions or makes related party reimbursement of dumping not actionable should be eliminated. This is the GSP offset that we talked about before.

There are, obviously, many other affirmative steps that the administration could take, but the above, hopefully, are important examples. The United States should safeguard not only that its victories at the negotiating table are preserved in implementing legislation but that the opportunities that exist in the agreement or that are not prohibited by the agreement that would solve longstanding difficulties in obtaining relief that is effective, that these are addressed.

The bearing industry is one in which the existence of U.S. trade laws have permitted, although belatedly, a partial restoration to the condition of fair trade. The result has been reinvestment, rehiring of workers, increased capital expenditures and R&D.

Many industries have been weakened and destroyed by the false signals foreign dumping provides as to lack of competitiveness. These laws have been important—in our case and in some cases critical—to survival. For the thousands of companies that needed to use these laws in the past and the hundreds of thousands of employees whose jobs have depended on speedy and effective relief from these laws, don't let them be weakened with our own enabling legislation.

Thank you. I would be pleased to respond to questions.

Chairman GIBBONS. Thank you.

[The prepared statement follows:]

BEFORE THE  
SUBCOMMITTEE ON TRADE  
WAYS AND MEANS COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

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Hearings on the Trade Agreements  
Resulting From the Uruguay Round  
Multilateral Trade Negotiations

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Testimony of  
Mr. David D. Gridley  
Director of Sales  
The Torrington Company

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On behalf of the Torrington Company, I wish to thank the Chairman and the Subcommittee for the opportunity to testify concerning the results of the Uruguay Round. Although the Round offers numerous opportunities for U.S. business, today I wish to concentrate on the implications of the Round for U.S. antidumping and countervailing duty laws -- laws which many U.S. industries have found critical in their battles to remain competitive.

The Experience of the U.S. Industry

The Torrington Company has been a petitioner and active participant in numerous antidumping and countervailing duty cases in the United States. Torrington is the world's leading producer of needle roller bearings and is the largest full-line domestic producer of antifriction bearings in the United States. Torrington began as a producer of needle bearings, which are used in everything from outboard motors to spacecraft. In the 1980s, Torrington acquired the Fafnir bearing company, which was the leading U.S. producer of ball



bearings. The company, headquartered in Connecticut, operates facilities producing super precision bearings for aerospace and other critical applications and commodity bearings in plants in various parts of the United States. The company also has a number of foreign manufacturing facilities and foreign joint ventures.

Seven companies dominate the production of bearings, each with plants in multiple countries. These companies include SKF, FAG, INA, NSK, NTN, Koyo and Minebea. SKF, FAG, and INA are headquartered in Europe and have plants in other European countries (e.g., Austria, Germany, France, Italy, Sweden, the U.K., Spain, Portugal, Switzerland), in South America, North America and Asia. NSK, NTN, Koyo and Minebea are headquartered in Japan and have plants in various countries including Brazil, Korea, Canada, Singapore, Thailand and/or Taiwan as well as in the United States. In the 1980s, all of these companies were aggressively dumping in the United States market in a battle for increased market share. Torrington and other U.S. producers were caught in the cross-fire between the European and Japanese giants battling for control of the market. As a consequence, many U.S. producers were forced to (1) close plants, slash workforces, reduce R&D and capital expenditures, (2) go out of business, (3) merge or (4) sell at distressed prices to foreign producers. In all more than 30 plants were closed, 13,000 workers lost jobs, and \$1 billion in capital disinvested.

The U.S. industry was forced in many instances to focus on niche products and specialized applications. With reduced volume, U.S. producers could not fund essential R&D to keep pace with the European and Japanese producers. Dumping by those producers thus caused deep, long-term injury, and caused significant structural changes in the industry. Unable to sell high-volume bearings at prices sufficient to cover costs and with a shrinking sales base to absorb overhead expenses, the industry found itself faced with increased unit costs on its remaining products. This not only caused plant closures and lay-offs, but it also caused many producers to fall behind in the development of new technologies.

In response to the extreme price depression, Torrington, on behalf of the domestic industry, filed antidumping and countervailing duty cases against nine countries in 1988. The dumping margins found by Commerce in the original 1988 investigation were in many cases over 100%. In response to the antidumping and countervailing duty orders there were a number of responses by the foreign producers: some engaged in a fairly massive game of circumvention for a period of time; some raised selected prices; some increased their investments in the United States and continued to sell at extremely depressed prices; nearly all continued to dump merchandise in the U.S. marketplace. Nevertheless, faced with at least partial price relief, U.S.

companies like Torrington have reinvested large sums to add back capacity that was closed, to upgrade facilities. Much of the new investment has been threatened by dumping from additional sources, by the continued dumping from the nine countries and by foreign producers' willingness to sell below cost out of their U.S. facilities.

Nonetheless, the continued viability of the U.S. antidumping and countervailing duty law remain critical to the U.S. bearing industry. As imperfect as existing laws, regulations and administration are, the orders have permitted the industry to survive. Eliminating the loopholes, eliminating the incentives to evade the orders, assuring that in fact the law provides a level playing field for domestic producers must be the objective of our implementing legislative process.

#### Implications of the Uruguay Round

First, I would like to extend my appreciation to Ambassador Kantor and his team at USTR and to Undersecretary Garten and his team at Commerce for the significant improvements in antidumping accomplished in Geneva during November and December. A draft agreement that has been described as a bad deal by the prior U.S. negotiators was rendered less objectionable by the hard work and determination of the U.S. team. I join the many other domestic users in expressing our appreciation for this outcome.



Nonetheless, the Uruguay Round results have the potential to make U.S. antidumping and countervailing duty laws more difficult and expensive to use and to provide less relief for shorter periods. Such an outcome is not required but will result if the Administration focuses on the "minimum" needed to adopt the Uruguay Round results -- the minimum in these areas would reflect changes which weaken U.S. law. The objective on these laws should be to adopt the strongest trade laws that GATT permits.

For example, changes in sales below cost methodology will certainly reduce dumping margins. Increased de minimis margins (four fold increase to 2% -- roughly one half of corporate profitability) will reduce relief available. Similarly, the need to analyze foreign producer data to submit justification for deviation from weighted average to weighted average in investigations will increase costs for domestic users as will the increased complexity of determining constructed value. "Sunset" reviews every five years -- which in the United States will occur only because of continued dumping by foreign producers -- will significantly add to the cost of obtaining relief and will significantly increase the uncertainty associated with reinvesting following affirmative findings of dumping and injury. These and many other "negative" aspects of the Uruguay Round text will undoubtedly be included either in implementing legislation or in regulations or practice.

The U.S. fought hard to limit the negative aspects in Geneva. Neither the Congress nor the Administration should be pursuing a strategy of not maintaining the benefits obtained or maximizing the rebalancing permitted by the new text.

An affirmative outcome for domestic users is possible

I believe that Torrington's experience is typical of U.S. companies who have found the need to seek relief from unfair trade practices abroad. We need strong trade laws that work. I believe that the U.S. can adopt changes that will be consistent with our GATT obligations that nonetheless will significantly reduce the negative aspects of the agreement. Let me provide a few examples:

(1) The U.S. insisted on existing antidumping findings and orders being treated as coming into effect, for sunset review purposes, on the date the World Trade Organization comes into effect. Implementing legislation should safeguard that result (hence reducing the disincentives to reinvest) and give all findings and orders the full five years before a review need be conducted.

(2) The U.S. should, consistent with our international obligations, adopt procedures for sunset reviews that minimize the amount of time and effort required for participation, properly obtain and verify information (particularly pertaining to foreign producer shipments, capacity, etc.), and adopt constructions of the key terminology (likely to continue or

recur) to achieve reasonable results in light of the continued dumping practices.

(3) The statutory language or U.S. International Trade Commission practice should be modified to make relief available earlier, if relief is likely to be shorter lived.

(4) Relief provided should be effective. Many issues prevent its being so at the present time:

(a) Compensation. The overly restrictive injury constructions result in industries being behind by the time relief is granted. Compensation -- not prohibited by the GATT -- is not provided to redress the actual condition of the industry.

(b) Elimination of incentives to evade antidumping orders or minimize relief. Foreign producers and their importers are provided a series of incentives to evade antidumping and countervailing duty orders or to reduce the margins of dumping or subsidization found. For example, because ultimate liability depends on merchandise being unliquidated, there are many efforts taken by foreign producers to have exports classified under HTS numbers that will not be caught by the Customs Service, permitting such entries to escape liability regardless of dumping. Similarly, premature liquidation by Customs is viewed by the agencies as non-correctible. Liability should continue for importers until all entries properly the subject of an antidumping inquiry are



identified and reviewed. So too, there are a series of artificial walls that can permit manipulation of data or prevent problems being spotted and quickly corrected. My counsel informs me that information received under administrative protective order cannot be used in subsequent administrative reviews, nor can information from the same company located in different countries being used to check for reasonableness of the responses, nor can importers' files at Customs be accessed under APO at Commerce, nor can concerns raised by APO submissions at Commerce be communicated to Customs by domestic counsel. Such artificial walls can permit gamesmanship to go undetected, reducing the effectiveness of the orders.

(c) The relative ease of converting counter-vailable subsidy programs into non-"specific" subsidies (hence not actionable) has gutted U.S. countervailing duty law for most industries. In Torrington's case, a press account after the orders indicated that one of the foreign producers had approached to the government to have four words deleted from the existing statute so that the same benefits to the same companies would no longer be actionable!

(5) The biases in current administration, not required by the GATT agreement, that favor related party transaction or make related party reimbursement of dumping not actionable should be eliminated. The U.S. fails to deduct from related party resale prices an amount equal to a reasonable profit on

the resale. All of our trading partners make such deductions and the GATT agreements (since 1967) have specifically authorized the deduction. The result has been an acknowledgment by those representing foreign producers that U.S. law creates a bias in favor of related party transactions. This bias should be eliminated. So too, U.S. law unintentionally results in foreign producers and their related party importers being able to shield their customers from the consequences of an affirmative dumping determination where they are willing to "eat the duties". I am informed that Article 9.3.3 of the antidumping agreement -- the so-called "duty as a cost" provision -- would permit the U.S. government to eliminate this unintended result.

There are obviously many other affirmative steps the administration could take but the above hopefully are important examples. The U.S. should safeguard not only that its victories at the negotiating table are preserved in implementing legislation but that the opportunities that exist in the agreement or that are not prohibited by the agreement which would solve some longstanding difficulties in obtaining timely relief that is effective are addressed. The bearing industry is one in which the existence of U.S. trade laws has permitted, albeit belatedly, a partial restoration to conditions of fair trade. The result has been reinvestment, hiring of workers, increased capital expenditures and R&D. Too many industries

have been weakened or destroyed by the false signals that foreign dumping provides of lack of competitiveness. These laws have been important, in some cases critical, to survival. For the thousands of companies that have need to use these laws in the past and the hundreds of thousands of employees whose jobs have depended upon speedy and effective relief from these laws, don't let them be weakened.

Thank you. I would be pleased to respond to questions.



Chairman GIBBONS. Let's go to Mr. Heaton.

**STATEMENT OF ROBERT E. HEATON, CHAIRMAN OF THE BOARD OF DIRECTORS, SPECIALTY STEEL INDUSTRY OF THE UNITED STATES, AND VICE CHAIRMAN, STAINLESS STEEL GROUP, LUKENS, INC.**

Mr. HEATON. I am Bob Heaton, vice chairman of the Stainless Steel Group of Lukens, Inc., a company headquartered in Pennsylvania. I am also chairman of the board of directors of the Specialty Steel Industry of the United States, which is comprised of about 14 domestic producers of specialty steel.

We are a small industry, about 35,000 men and women, and that is down quite a lot from about 10 years ago. Our annual sales are around \$6 billion. This is my 39th year in the specialty steel business.

You have my prepared statement, which is quite lengthy, about our thoughts on the whole GATT arrangement and the legislation. I have sat here since 9:30 with you, and I have decided to forgo my 10 pages of testimony to you and just talk to you off the shoulder—

Chairman GIBBONS. All right, fine.

Mr. HEATON [continuing]. Talk to you of what I feel in my heart on this subject.

Many of the comments today from my friend from the carbon steel side of the business we obviously support. But I want to just say a few things, which I think are very important, and then not take a great deal of your time.

First of all, specialty steel is a relatively small industry, 35,000 people. We are producing in four or five States in the country. We would not be here without specialty steel. We are talking stainless steel, high temperature alloys for all our defense programs. You wouldn't have electricity, chemical plants, food processing, milk, whatever, without specialty steel. It is a very, very critical part of our economy in the United States.

We are very technologically modern and advanced. We are spending about \$200 million a year improving our plants, new equipment, new facilities. We are spending about \$30 million for R&D and about \$30 million for environmental control and protection.

I have personally visited almost every specialty steel producer around the world. I have been to Japan, Mexico, South America, to Italy, to Spain, to the United Kingdom, and I know from where I speak. We are very technologically advanced and modern. Yet, we have suffered and continue to suffer because of subsidies.

There has been a lot of talk about subsidies today. It gets into the implementing legislation we are asking for in my draft for the GATT. We have provided the House and the Senate with a list of the last 3 to 4 years around the world of speciality steel producers that have been subsidized by their governments to the tune of \$17 billion. It all came from public documents and their reports. It is absolutely factual.

It is not a part of my testimony, but I want you to know that subsidies in specialty steel are a major problem throughout the world, therefore, we are pleading to have our fair trade laws maintained, as are the other witnesses here today.

Those subsidies have resulted over the last 3 to 4 years of specialty steel plants being built around the world to the tune of the capacity exceeding the total consumption of speciality steel in the United States. The new capacity alone exceeds our total consumption. That capacity is coming here.

In 1993, the year we just finished, the imports of specialty steel surged 50 percent above the tonnage in 1992.

That amount of steel pouring into the United States from subsidized producers around the world cast the equivalent of 5,000 jobs in the steel industry. It was a tremendous amount of employees.

A great amount of people and a lot of money was lost in jobs because of that steel flowing into this country.

What I am trying to point out is that we have proven subsidies factually. We are getting buried in foreign specialty steel, and without our trade laws to fall back on, we will be in desperate trouble. The implementation language from the GATT cannot weaken our trade laws as it has already.

In the last 20 years, we have filed over 20 cases with Commerce, and we have won every case on subsidies and dumping. We have never lost a case.

We talk about a backlog of 180 cases for a small industry. That is a pretty high percentage. So we are going through this issue now of subsidies and dumping which we have to have addressed under the implementing legislation.

My last point, that nobody else has talked about today, is the fact that the administration is proposing around the world for all steel companies, including specialty steel, a zero-for-zero tariff reduction. For the life of me, we cannot understand why we would want to do that, to open the door to foreign producers, the steel that is being dumped here and subsidized on the basis of a zero-for-zero tariff reduction without an MSA.

We have no MSA, as you well know. Although I could talk a lot about the subsidies issue, the green lighting and so forth that have been covered today, to give a zero-for-zero tariff reduction in steel, without an effective and ongoing MSA, to me, escapes my understanding of where we are headed in this steel business.

I would plead that that would not happen, along with adopting, in the implementing legislation, the thoughts that I have outlined.

I want to say one last thing and then I will finish. In specialty steel, as opposed to carbon steel—stainless steel is very heavily chrome and nickel, and those major cost elements are dollar denominated around the world. So, we know that a stainless steel company in Japan or South America or Spain pays the same price for the raw materials as we do in the United States.

Our energy costs in the United States, electricity and gas, are generally lower than most producing countries. Stainless steel is a very highly intensive energy product.

That gets you down to labor. I have been around the world and I could show you from the most modern competitors' plants, the crew sizes for a given piece of equipment are unbelievable. We have mineral and large 40,000-pound corrals. They are able to do it with 10 to 12 men in most other foreign nations, where labor is not an issue to them.

The fact is that we are competitive, and when we figure—back into a selling price, knowing the raw material price, the energy costs and the wages, we know dumping is occurring here, and therefore, we have had to use our trade laws.

So I would, in closing, urge that we would not agree to this zero-for-zero tariff proposal around the world without an MSA; and certainly we would adopt the suggestions contained in my written brief for not weakening the trade laws. We are a very vital industry.

Thank you.

Chairman GIBBONS. Well, thank you, Mr. Heaton. And I particularly appreciate your sitting here so long. I apologize to all of you.

Mr. HEATON. We appreciate your sitting here.

[The prepared statement follows:]



Before the  
Subcommittee on Trade  
Committee on Ways and Means  
U.S. House of Representatives

**TESTIMONY OF**

**ROBERT E. HEATON**

**SPECIALTY STEEL INDUSTRY OF THE UNITED STATES**

Mr. Chairman and Members of the Subcommittee:

My name is Robert E. Heaton and I am Vice Chairman of the Stainless Steel Group of Lukens, Inc., a producer of specialty steel. I also serve as Chairman of the Board of Directors of the Specialty Steel Industry of the United States, a national trade association representing 14 domestic producers of specialty steel. Our industry employs some 35,000 men and women and has annual shipments exceeding \$6 billion. Specialty steel companies represent a unique segment of the U.S. steel industry producing stainless, tool, heat-resisting and electrical steels as well as superalloys and other high technology materials. Our high-technology products possess unique characteristics that permit their use in extreme environments demanding exceptional hardness, toughness, strength and resistance to heat, corrosion and abrasion.

I appreciate the opportunity to testify before you today on the results of the Uruguay Round of the General Agreement on Tariffs and Trade. Because of my industry's long-standing struggle against the unfair trade practices of foreign specialty steel producers, I am vitally concerned about how the final agreement negotiated in Geneva will be implemented into U.S. law. Equally as important, the specialty steel industry is deeply troubled that the U.S. government is proceeding forward with the so-called "zero for zero" steel tariffs proposal absent the successful conclusion of a Multilateral Steel Agreement ("MSA").

While our trade negotiators significantly improved the so-called Dunkel draft text in the waning hours of the negotiations, there are various provisions incorporated into the final agreement which will weaken the ability of American industries to protect themselves against dumped and subsidized products. Rather than strengthening domestic trade laws, this agreement makes it more difficult for U.S. industries to file unfair trade cases, more difficult to obtain affirmative decisions and more difficult to maintain outstanding orders. If the Congress cannot enact implementing legislation which provides domestic industries and their workers with effective relief from unfair trade practices consistent with our GATT obligations, I urge you not to ratify the final GATT agreement.

While we breathed a sigh of relief that the final GATT agreement was an improvement over the original Dunkel draft, we were disappointed, but not completely surprised, that no Multilateral Steel Agreement was completed. However, the U.S. government is now proposing a worldwide reduction of steel tariffs to zero -- including specialty steel -- without the concurrent negotiation of an MSA that would substantially limit steel subsidies. Under this scenario, we could be left with the worst of both worlds: continued, substantial foreign steel subsidies and the loss of the benefit provided by current U.S. duties. Why should we hand zero tariffs to those foreign producers who dump and subsidize products into our market while at the same time, use various ingenious techniques to keep our products out of theirs? Frankly, the logic behind this proposal escapes me and the specialty steel industry will continue to vigorously oppose any effort to negotiate a zero for zero tariff regime without the successful conclusion of a Multilateral Steel Agreement.

Before I highlight provisions that need to be incorporated into the implementing legislation to maintain the effectiveness of U.S. trade laws to the fullest extent possible under the GATT agreement, I want to emphasize that these laws are not just technical

niceties that take up space in the U.S. Code. They can actually mean the difference between the survival or demise of an American industry -- even a technologically innovative one. My industry is a case in point. During the past 20 years, we have filed and won more than 20 cases under U.S. trade laws to remedy the injury caused by the unfair trade practices of our foreign competitors. The successful prosecution of these cases has proven critical to our industry's financial health. Without tough laws to rectify the distorted prices of dumped and subsidized foreign steel, there is no question that the ranks of domestic specialty steel industry would be much thinner today and that we would not have been able to maintain our technological prowess.

Despite our success with the dumping and countervailing duty laws, imports of specialty steel products have more than tripled in the past 10 years, with a 50 percent surge in imports last year alone. This dramatic import surge in 1993 cost 5,000 steelworkers their jobs and nearly \$200 million in lost wages. We believe that this recent flood of imports can be traced directly to the staggering \$17 billion of subsidies spent by foreign governments in the past six years to increase their countries' capacity to produce and export specialty steel.

The fact that we have had to resort to legal remedies to ensure our survival does not mean that this industry is noncompetitive. The producers in this sector have maintained their commitment to modern technology, innovation and productivity, even in the face of the continuous assault of unfairly traded imports. Such a commitment is reflected in the sustained capital investment in our production facilities and the ongoing effort to bring new materials to the marketplace.

When one refers to the specialty steel industry, one speaks of a high technology sector of the industrial economy that has done all the right things for many years, including the following annual expenditures:

- Investing heavily in technological research and development -- \$30 million.
- Investing in efficient, productive plants and equipment -- \$200 million.
- Investing in environmental controls -- \$30 million.
- Providing thousands of high-paying, highly-skilled jobs -- 35,000 employees averaging \$40,000 each.
- Investing in market growth for specialty steel to reduce the life-cycle costs of consumer and capital goods needed for our nation.

This commitment to investment in research and development is the single most important factor enabling our industry to achieve and maintain a position of global leadership in the production of specialty metals. The commitment is all the more important today as the American economy becomes increasingly dependent on high-technology specialty materials as a foundation for our defense systems, transportation systems and our critically essential manufacturing sector.

But clearly all of the technological innovation in the world cannot ensure an industry's survival if it is competing against foreign competitors that are able to take advantage of government subsidies or that can sustain dumped prices until they have driven their American counterparts out of business. That is where U.S. trade laws provide the crucial element in the balance of international trade. These laws are needed to make sure that foreign producers abide by internationally accepted rules of lawful commercial conduct. They are essential to preserving competition in the U.S. market so that American consumers always pay a fair price for their purchases.

Unfortunately, the Uruguay Round agreement undermines these important objectives. While there are numerous parts of the agreement that weaken current U.S. trade laws, I would like to highlight a few of the more serious problems for your review and suggest some ways to address these issues in the implementing bill:

- **Use of Averaging.** The new GATT Dumping Code requires that foreign market values and U.S. prices in investigations must be compared transaction-to-transaction or average-to-average. That is, in antidumping investigations where foreign market value is based upon a weighted average price, U.S. price must also be a weighted average, unless there is a pattern of price discrimination among U.S. prices by purchaser, region or time period. The GATT requirement to use averages on both sides of the dumping calculation is contrary to the current practice of the Commerce Department, which permits average foreign prices to be compared with U.S. prices on individual transactions. By changing this practice, foreign producers will be allowed to offset dumped sales with undumped sales and unfairly diminish their dumping margins.

However, because the new GATT Code does not disturb current U.S. practice in administrative reviews, the implementing legislation should ensure that Commerce may continue to compare weighted average foreign market values with individual U.S. prices in the post-investigation phase of the proceeding.

- **Sunset.** Unlike existing law, the GATT agreement requires that existing and future dumping and countervailing duty orders be revoked after five years, unless there is proof that the termination of the duty would likely lead to continuation or recurrence of the unfair trade practice and injury. Consistent with promises made to domestic industries during the Uruguay Round negotiations, all outstanding orders should be treated as entered on the date the agreement takes effect, which is projected to be July 1, 1995. In that way, the "revocation" review need not take place for an additional five years, or July 1, 2000.

Moreover, although the International Trade Commission is generally required to complete administrative reviews within one year, the ITC should be given adequate time after July 1, 2000 to complete this special review process for outstanding orders. The Commission should also be encouraged to simplify the procedures by reducing the data requirements on all parties. Reasonable and rebuttable presumptions should be established by statute to minimize the burden on the participants in these proceedings.

- **Definition of Subsidy.** The definition of subsidy in the final agreement generally parallels current U.S. law by encompassing both direct and indirect subsidies. The U.S. Congress should ensure that indirect subsidies, such as exemptions from regulations and governmentally-imposed export restraints on raw materials and other inputs, continue to be actionable.

- **Green Light Subsidies.** Contrary to existing law, the GATT Subsidies Code makes several types of subsidies nonactionable. Given the fungibility of money, these provisions must be carefully monitored to prevent foreign governments from reclassifying subsidies into nonactionable categories and thereby circumventing the countervailing duty law. The implementing legislation should therefore require that subsidies granted in excess of the allowable limits be actionable in full -- not just to the extent of the amounts exceeding the allowable limits. To prevent abuse of the green-lighted environmental subsidies, the legislation should ensure that the one-time 20 percent limitation on such subsidies applies to each facility, as opposed to each law and/or regulation enacted. Finally, the authorization for green light subsidies should terminate no later than five years after the establishment of the World Trade Organization, the new entity created by the GATT to implement the Uruguay Round agreements, which is expected to take place on July 1, 1995.

The above suggestions address changes in U.S. law required by the GATT. However, since the Uruguay Round has diminished the effectiveness of U.S. trade laws, the Congress should take affirmative steps to enhance the remedies available to domestic industries suffering from unfair trade practices. For example, domestic industries need -- and deserve -- compensation for the injury inflicted by dumped goods. The implementing legislation should therefore provide compensation awards to U.S. companies from the monies collected under dumping orders. This reimbursement will enable injured companies to invest in their companies and remain competitive. As a result, the legislation will be revenue-neutral because the money disbursed by the Treasury should be offset by increased tax revenues from capital spending and the retention of jobs by more competitive producers.



These and other changes in the implementing legislation are essential before the Specialty Steel Industry of the United States can support congressional ratification of the final GATT agreement. The implementing legislation must accomplish two objectives. First, while it must make changes in U.S. law required by the final GATT agreement, such changes must be implemented in a manner that does the least damage to the ability of U.S. industries to get effective relief from unfair trade practices. Second, the fact that the Uruguay Round seriously weakened domestic law provides compelling justification for the implementing legislation to include provisions that go beyond the issues specifically addressed in the GATT agreement. In other words, the implementing legislation must re-balance U.S. trade law and add provisions that improve the opportunity for American industries and their workers to obtain redress from unfair trade practices. I encourage you to give serious thought to the future of vital industries, such as specialty steel, when you consider the legislative provisions that will govern U.S. trade law into the 21st century.

Thank you for your kind attention.

**STATEMENT OF ROGER B. SCHAGRIN, GENERAL COUNSEL AND EXECUTIVE DIRECTOR, COMMITTEE ON PIPE AND TUBE IMPORTS; AND TRADE COUNSEL, WEIRTON STEEL CORP., WEIRTON, W. VA., ARMCO, INC., PITTSBURGH, PA., AND TYCO INTERNATIONAL, GRINNELL DIVISION, EXETER, N.H.**

Mr. SCHAGRIN. Good afternoon, Mr. Chairman. Like Mr. Heaton, I am also going to summarize my testimony, which I am sure will make everyone very happy.

For the record, my name is Roger Schagrin, from the law firm of Schagrin Associates, and I am here representing a number of domestic manufacturing interests, including a group of 20 pipe and tube producers called the Committee on Pipe and Tube Imports, having plants in 17 States.

Weirton Steel Corp. is still the largest employee-owned manufacturing company in America. Armco, Inc., which is in the specialty steel business; and the Grinnell Division of Tyco International, which is the world's largest producer and installer of fire sprinkler safety products—I note that this room doesn't have sprinklers in it; but they are moving along in most of the buildings on Capitol Hill—together, this group of clients has over 75,000 employees. And I am very proud to say that each and every one of them is either the most competitive or among the most competitive manufacturers of those products in the world.

I also have the privilege of chairing the Government Affairs Committee of a group called the Committee to Support U.S. Trade Laws, a group with which I know you are familiar; and it is a broad-based coalition which includes a variety of U.S. companies and unions, all of whom support strong U.S. trade laws.

First, I would like to personally thank you, Mr. Chairman, for the efforts that you and your committee and other Members of the House contributed during the GATT negotiations, particularly during the final days of negotiations in Geneva. Without your help and the commitment by Ambassadors Kantor and Yerxa and Under Secretary Garten and his negotiating team, we would have been unable to avoid the potential disaster for America which would have occurred if the Dunkel text issued in December 1991 had not been drastically changed. Fortunately, those changes were made.

As you and the committee and the administration move forward to implement this new GATT I would suggest you keep in mind three principles:

First, the unfair trade laws must remain effective in combating unfairly traded foreign imports;

Second, domestic producers and their workers who have proven they have been injured by foreign unfair trade practices must be compensated from a portion of the unfair trade duties collected by the Customs Service; and

Third, the administration and the committee should keep simplification in mind as you are making changes to the statutes so that small- and medium-sized businesses will have access to these laws.

There are a number of areas in which the GATT changed the laws. They have been discussed today. One of the major ones is the area of sunset, and from our viewpoint, we must ensure that the

relief from unfair trade practices lasts at least as long as is allowed by the new code, and that the rules governing the ITC's review allow that relief to continue where it is apparent that the dumping and subsidization continue and that removal of the order will cause the injury to recur.

There are also numerous technical changes in areas such as sales costs, averaging constructive value, de minimis margins; and we urge you to implement these in a manner which, consistent with the GATT, do the least in terms of weakening our laws.

In a key area in which the new GATT code is silent, such as circumvention, the administration and Congress must make certain our laws are strengthened and vigorously enforced. I can tell you there is nothing more frustrating for a domestic industry that has survived the gauntlet of demonstrating both unfair trade practices and injury to the Commerce Department and to the ITC than to see lawyers and importers and foreign producers scheme away in order to circumvent the order and undermine the benefits that the industry rightly deserves. The United States ought to tighten our rules against circumvention, and we should also provide for procedures and statutory timelines, so that petitions alleging circumvention are investigated and determinations made by the Department in the timely manner which those accorded relief under the laws justly deserve.

Mr. Chairman, we are all well aware what our unfair trade laws provide under prospective relief. When an industry that has suffered injury finally sees unfair trade duties begin to be selected by the GATT some 3 to 7 months after a case is filed, the injuries suffered by these industries affect their ability to make capital investments necessary to remain competitive both in this market and in foreign markets; they lost workers their jobs and have a number of other negative implications.

The unfair trade duties collected by the Treasury can offset some of the future from unfair competition, but as you have heard discussed today, in related-party importer situations, often the foreign parent corporation eats a large portion of the dumping duties. You and this committee realize the existence of this problem, and in 1988 you put into the Trade Act a provision for compensation of injured industries to be collected from the future unfair trade duties. Unfortunately, that provision was stripped in the conference.

Mr. Chairman, I urge you to include a compensation provision in this implementing legislation. Finally, I believe the committee and the administration should actively look for ways to simplify these laws. I have personal experience with the fact that small- and medium-sized businesses can no longer afford the legal fees required to utilize these laws, which have grown exceedingly more complex. I may be in the distinct minority of lawyers that believe that it would not be harmful to the system if we sacrifice a little of the exactitude when we attempt to measure both margins and injury in return for lower legal fees and costs. I think the U.S. economy will suffer in the long run if in another few years, the only companies that are able to bring trade cases have to be "Fortune 500" companies.



Mr. Chairman, I thank you for the opportunity to testify today. I look forward to working with you and your excellent professional staff as you prepare this implementing legislation.

[The prepared statement and supplemental statements from Armco, Inc., and Herbert Elish of the Weirton Steel Corp. follow:]

## STATEMENT OF ROGER B. SCHAGRIN

Good morning, Mr. Chairman and members of the Ways and Means Trade Subcommittee. Thank you for allowing me to provide comments on issues related to the recent trade agreements concluded in the Uruguay Round. For the record, my name is Roger Schagrin of the law firm of Schagrin Associates. I represent a number of significant domestic manufacturing interests, including the Committee on Pipe and Tube Imports, a trade association comprised of 20 domestic producers of steel pipe and tube products located throughout the country; Weirton Steel Corporation of Weirton, West Virginia, still the largest employee-owned manufacturing company in America; Armco, Inc. of Pittsburgh, Pennsylvania, a diverse manufacturer of specialty steel products; and the Grinnell Division of Tyco International of Exeter, New Hampshire, a manufacturer and installer of products for automatic fire safety sprinkler systems. Together, this group of clients represents over 75,000 employees in the United States, and I am proud to say that they are either the most competitive or among the most competitive manufacturers of their products in the world. I also have the privilege of chairing the Government Affairs Committee of the Committee to Support U.S. Trade Laws, a broad based coalition which includes a variety of U.S. companies and labor organizations who support strong U.S. trade laws.

I wish to personally thank you, Mr. Chairman and members of the subcommittee for the personal efforts that you, and your colleagues on the committee and in the House contributed during the GATT negotiations and during the final days in Geneva in order to maintain strong and effective unfair trade laws for the United States. With your help, and with a strong commitment by Ambassadors Kantor and Yerxa, Undersecretary Garten and the entire team of U.S. negotiators were able to avoid the potential disaster for the United States that could have occurred if the Dunkel text issued in December 1991 had been adopted.

As the committee and the Administration prepare the legislation implementing the GATT Agreement, I would suggest that you should keep in mind three over-arching principles. First, the unfair trade laws must remain effective in allowing U.S. industry to combat unfairly traded imports. Second, domestic producers and their workers who have proven they have been injured by unfair trade practices must be compensated from a portion of the unfair trade duties collected by the Customs Service. Third, the Administration and the committee should keep simplification in mind as you are making changes to the Statute so that small and medium-sized businesses will have access to the use of the unfair trade laws.

There are a number of areas in which the GATT Agreement required changes to U.S. law. One of the most important of these is the new sunset provision. We must ensure that relief from unfair trade practices lasts at least as long as is allowed by the new Code and that the rules governing the ITC's review allow relief to continue where it is apparent that dumping and subsidization continue and removal of the order will cause injury to recur.

There are also numerous technical changes to the calculation methodologies used by the Department of Commerce in making dumping determinations. These include averaging, sales below cost, constructed value, *de minimis* margins, and others. These areas should be implemented in a manner that does not weaken the laws.

In key areas in which the new GATT Codes are silent, such as circumvention, the Administration and Congress must make certain that our laws are strengthened and vigorously enforced. There is nothing more frustrating for the domestic industry that has survived the gauntlet of demonstrating both unfair trade practices and injury to the Department of Commerce and ITC than to see the lawyers, importers, and foreign producers scheme away to circumvent the order and undermine the benefits to the industry of having won the case. The U.S. should tighten the rules against circumvention and should provide for procedures and statutory time lines so that petitions alleging circumvention are investigated and determinations made by the Department in the timely manner which those accorded relief under the laws properly deserve.

Mr. Chairman, we are all well aware that our unfair trade laws provide only prospective relief. An industry that has suffered injury finally sees unfair trade duties begin to be collected 3 - 7 months after a petition is filed. The injury suffered by these industries has already affected their ability to make the capital investments necessary to be competitive with their foreign

competitors both in the U.S. market and in foreign markets. It has also cost workers their jobs, sometimes permanently. The unfair trade duties that are collected by the U.S. Treasury can offset some of the future harm from unfair competition, though to be honest, in related-party importer situations, often the foreign parent corporation eats a large portion of the dumping duties. You and this committee realized the existence of this problem and in the 1988 Trade Act, this committee and the House of Representatives passed a provision that would compensate injured industries from the future unfair trade duties collected by the government. Unfortunately, this provision was stripped from the bill in conference. Mr. Chairman, I urge you to include a compensation provision in the GATT implementing legislation.

Finally, I believe that the committee and the Administration should actively look for ways to simplify these laws. I have had personal experience with the fact that small or medium-sized businesses can no longer afford the legal fees for the effort required to utilize these laws, which have grown exceedingly more complex in terms of practice at both the Commerce Department and the ITC in the past decade. I may be in the distinct minority of lawyers that believe that it would not be harmful to the system if we sacrificed a little of the exactitude with which we attempt to measure both margins and injury in return for lower legal fees and cost. I think that the U.S. economy will suffer in the long term if in another few years the only companies that have access to the unfair trade laws are Fortune 500 companies.

Mr. Chairman, thank you for the opportunity to testify today. I look forward to working with you and with your excellent professional staff as this legislation is prepared.



## STATEMENT OF ARMCO INC.

This testimony is submitted on behalf of Armco Inc., a specialty steel producer headquartered in Pittsburgh, Pennsylvania. Armco is a leading U.S. manufacturer of cold-rolled stainless steel sheet and strip, silicon electrical steel, and stainless steel plate. The company also has divisions which produce carbon flat-rolled steel and carbon pipe and tube products. Our principal manufacturing plants are located in Pennsylvania, Ohio and Maryland. Armco is also a 50% partner in a new facility in Kentucky. The company employs approximately 6500 workers. Being a world-class competitor, Armco actively markets its products both in the United States and throughout the world.

Armco is a member of the Specialty Steel Industry Association of the United States. That association presented oral and written testimony to this Committee through its chairman, Robert Heaton. Armco supports that testimony in its entirety but wishes to add certain areas of specific concern.

The unfair trade laws are absolutely critical to the continued existence of Armco and our industry. Imports of specialty steel products, already a very large part of our market, have been surging. For example, imports of stainless sheet and strip, the largest segment of the market, jumped by over 62% to 343,600 tons in 1993 from 211,900 tons in 1992. Total imports of specialty steel rose by over 42%, from 464,000 tons in 1992 to 661,100 tons in 1993. Many of these imports are unfairly traded. Thus, the electrical steel industry and its employees recently filed antidumping cases against imports of silicon electrical steel from Italy and Japan, and a countervailing duty case on this product against imports from Italy, where our competitor is majority-owned by the Italian government. The preliminary results of these cases resulted in findings of dumping margins of over 30% on imports from Japan and subsidies of over 20% on imports from Italy.

There is simply no way for a private company in the United States to compete against the Italian government or against Japanese producers who enjoy the advantage of having a large home market protected by non-tariff barriers. While these trade cases are expensive and time-consuming, it is necessary for Armco to participate in such actions in order to remain competitive and to have the capital necessary to invest in the research and development expenses and the continuous equipment upgrades necessary for this highly technical product.

Armco is extremely concerned that the GATT Agreement, while an improvement over the Dunkel text, weakens U.S. unfair trade laws. The following are the areas in the implementing legislation about which we have specific concerns:

1. Sunset Rules

The new GATT Agreement requires that orders be terminated after five years unless the administering authorities determine that dumping or subsidization, and injury are likely to continue or recur under the transition rules. Under the Agreement, all present orders are deemed to have an effective date as of July 1, 1995, which means that they must be reviewed no later than July 1, 2000. These reviews should normally be completed within twelve months.

The goal of Congress in implementing this provision should be to ensure that sunset reviews are not initiated by the ITC prior to the maximum time allotted by the GATT simply in order to ease the administrative burden on the ITC. In addition, in order to give domestic industries the opportunity to prevail in sunset investigations, Armco believes U.S. law should create the rebuttable presumption that if there is a finding in previous administrative reviews that dumping or subsidization is occurring, the Commission should find that injury will continue or recur whenever there is (1) foreign excess capacity, (2) orders in effect on the same product in other countries, or (3) any other information that will lead the Commission to believe that import volumes will increase if the dumping or subsidy orders are terminated.

## 2. Compensation

Under current law, all relief from unfair trade practices is prospective. U.S. producers must demonstrate that they have been injured or are threatened with injury before antidumping or countervailing duties are imposed (with the exception of countervailing duties against a country that is not a signatory to the Subsidy Code). In fact, the ITC bases an affirmative injury determination on threat in less than 5% of cases. Therefore, before relief is granted, the industry has already suffered injury from the unfairly traded imports, including lost profits, reductions in capital available for investment, plant closings, and losses in employment. Yet, the general Treasury of the United States is the recipient of all unfair trade duties collected, and the injured industry receives nothing.

Armco's Eastern Stainless Division is the leading producer of stainless plate products in the U.S. During the last five years, stainless plate imports have more than doubled from 17,000 to 35,000 tons and now take 16% of the U.S. market. Armco has recently had to shutter the melt shop and lay off employees at Eastern. However, the market for stainless plate is a small one, approximately 200,000 tons per year in the U.S. Given the enormous expenses of litigation, Armco has determined at various times not to undertake unfair trade actions against what we strongly suspect are unfairly traded imports. A compensation provision which would provide some recompense to Eastern for the injury which it would have to prove to the ITC it has suffered, could be a decisive factor in determining whether this division would pursue its legal rights under the unfair trade laws.

Congress should enact a compensation provision which would establish special compensation accounts at Customs from 50% of the duties collected for each antidumping or countervailing duty order. These funds would be distributed to the domestic industry for purposes such as funding pension plans or reinvesting in plant and equipment, the types of activities often affected by injurious unfair trade. The fact that orders are now subject to sunset after five years, further reducing the relief available to domestic industries, is another reason in support of this provision.

## 3. Sales Made Below Cost of Production

The GATT requires a change in U.S. practice not to discard sales made at below cost of production in determining foreign market value until over 20% of total sales are found to be below cost. Current U.S. practice allows sales below cost to be excluded after 10% of sales are found to be below cost. The GATT Agreement permits the current U.S. practice of analyzing cost over either the six month period of investigation or the twelve month period of administrative review.

Congress should include in the implementing legislation a requirement, permitted under the GATT, that the Commerce Department request cost of production information in all antidumping cases in the original questionnaires. Under the present system, the petitioners are required to demonstrate, often through painstaking analysis of product sales information, that there is evidence that sales are below cost over an extended period of time. This is a very expensive and burdensome part of investigations for the petitioners. The European Community and Canadians always ask for cost information in antidumping questionnaires. If all sales are clearly above cost, then there is no additional workload for the Commerce Department or the petitioners. An additional benefit of requiring this information is that both the Commerce Department and the petitioners will have cost information that will allow them to analyze claims for difference in merchandise adjustments put forth by responding companies.

#### 4. New Constructed Value Rules

Under the present U.S. system, when over 90% of sales are found to be below cost, or where there is no home market or third country market for the product under investigation, the Commerce Department utilizes constructed values to calculate foreign market value. Constructed value is currently defined as the sum of (1) cost of manufacture, (2) actual selling, general and administrative expenses (SG&A), unless SG&A is less than 10%, in which case a statutory 10% minimum is used, (3) actual profits, unless profit is less than 8%, in which case a statutory 8% minimum is used, and (4) the cost of packing the merchandise for export. The new GATT Dumping Code provides that producer specific and product specific SG&A and profits should be used, without any minimum. If such information is not available or the producer has no sales within the ordinary course of trade, i.e., all sales have been found to be below cost, then the agreement specifies that the administering authority should base SG&A and profit on (1) the respondent's experience on home market sales of the same general category of products, (2) the weighted average experience of other producers in the home market product, or (3) any other reasonable method, but the profit so determined is capped by the profit experience of other producers on home market sales of the same general category of products.

In implementing this change in the law, Congress should give the Commerce Department the maximum flexibility to utilize either the highest profit allowed under the cap, or to avoid the cap through the use of best information available where the respondents have not provided all the information required by the Department for them to analyze the various profit alternatives. This is necessary in order to avoid situations in which the domestic industry is significantly disadvantaged because average profits on a category of products in the country under investigation are negative or minimal.

#### 5. Circumvention of Antidumping and Countervailing Duty Orders

The GATT Codes are silent as to circumvention. For this reason, the U.S. has the ability to both improve the circumvention provisions of the law and to expedite their enforcement by the Commerce Department. Presently, it is difficult to get at circumvention through the assembly of parts in third countries or the United States. This can be remedied through the adoption by Congress of the proposal put forth by the U.S. in the GATT negotiations.

In addition, present U.S. circumvention law has no procedural requirements. In practice, this has led to significant delays in receiving relief under this part of the statute. Congress should implement procedural requirements that mirror Department of Commerce procedures in investigations. The Department of Commerce should be required to initiate petitions filed under the circumvention provisions within thirty days, and then should be required to reach preliminary and final determinations within a nine month period. If the Department does not itself address this issue, this would be high on the list of priorities for action by the Congress.

#### 6. Averaging

The new GATT Agreement requires the averaging of both import prices and home market values over the period of investigation. It allows individual import prices to be compared to average foreign market prices (current practice) whenever there is a pattern of price discrimination in import prices by purchaser, region, or time period. The Agreement does not prevent the use of individual import prices in administrative reviews. Therefore, the implementing legislation should ensure that averaging is not used in administrative reviews, the assessment phase of the antidumping proceedings. In addition, Congress should require



Commerce to collect individual transaction prices, including information on purchasers, regions of importation, and time period in each investigation, and set a low standard for the variance in import prices required to avoid averaging.

6. Standing

The new GATT Agreement sets requirements that petitions be filed by at least 25% of the industry and that the administering authority determine that at least 50% of the industry is in support of such petitions. In order to avoid the need for polling of the domestic industry in every case (a procedure that will add expense to petitioners and burden the Commerce Department), Congress should implement the provision so that whenever a petition is filed by more than 25% of the industry, the Commerce Department need not poll the industry unless domestic producers inform the Department that they oppose the petition within ten days after its filing. All polling and the determination on standing should be done prior to the twenty day initiation period, as it puts more time pressure on those who might be opposing petitions.

7. Exporter Sales Price (ESP) Sales and Duty as a Cost Issues

Most steel imports and imports of many other products are made by trading companies or distributors related to foreign producers. Under these circumstances, U.S. prices are established by the sale price between the related U.S. party and the first unrelated purchaser. This price is known as Exporter Sales Price (ESP). The U.S. is unique in the world for not deducting from U.S. price a reasonable profit on ESP sales. U.S. practice does allow reduction in U.S. price for the selling expenses attributable to the related party importer, but this reduction is offset by an equal reduction to home market price for indirect selling expenses incurred by foreign producers in their home market. The U.S. is also unique among countries enforcing dumping laws in allowing this indirect selling expense offset to foreign market value. To conform U.S. practice to that of our trading partners, the implementing legislation should require that U.S. price be reduced by the amount of a reasonable profit for ESP sales and eliminate the indirect selling expense offset to foreign market value.

In circumstances where there are related party importers, it is often the case that the antidumping duties that are assessed are not passed on to customers but are rather treated as a cost by the parent foreign company. Under the EC practice, the amount of antidumping duties is treated as a selling cost to the foreign producer, and thus a reduction in sales prices, unless the related party importer can demonstrate that the duties have been passed on to unrelated customers in the form of higher sales prices. The GATT Agreement includes a provision that recognizes the legitimacy of the EC practice. The implementing legislation should adopt the EC practice in order to eliminate the practice of foreign producers absorbing duties and to ensure the price relief that should result from the imposition of antidumping duties.

8. Subsidies

The new GATT agreement makes substantial changes to the Subsidies Code. Among the most important changes are the green lighting of subsidies in three areas; basic and applied research; regional development subsidies; and certain environmental subsidies. These green light categories are only in effect for five years, and then are subject to review by the Subsidies Code Committee. The code also embodies additional notification procedures for subsidy programs and creates a presumption of serious prejudice for subsidies greater than 5%.

Armco has joined with other segments of the steel industry in the past in supporting a Multilateral Steel Accord that would prohibit all subsidies to the steel

industry. It is clear to Armco and the rest of the steel industry that the U.S. can never match the subsidies that foreign governments grant to foreign steel producers. Therefore, Armco has always taken the position that U.S. steel producers should willingly give up their meager government subsidies in return for the prohibition of subsidies to our foreign competitors. Clearly, the GATT Subsidies Code must be viewed as a step in the wrong direction by the domestic steel industry.

Given the Subsidy Code changes that require changes to U.S. law, Congress should make sure in the implementing legislation that the authority for green lighting these subsidies expires after five years. In addition, the implementing legislation should provide for reports to the Congress by USTR as to the actions that the Administration is taking to ensure enforcement of the notification provisions of the subsidies code by our foreign trading partners and the actions that USTR is bringing before GATT in areas in which subsidies greater than 5% are actionable under the serious prejudice provision presumption.

### Conclusion

One overriding reason that the U.S. must retain strong antidumping laws is that the GATT Agreement does not affect the underlying causes of dumping into the U.S. market. The industry's dumping case on silicon electrical steel has shown that prices in Japan are at least 30% higher than prices charged by Japanese producers for the same products in the U.S. market, despite relatively low Japanese tariffs. The GATT Agreement, while eliminating the already low tariffs on steel in Japan, does not in any way remove the non-tariff barriers that allow this type of price discrimination between markets to occur. There is in fact no relief available for Armco and other U.S. manufacturers against this type of pricing behavior except for strong and effective antidumping laws.

Armco asks that the Committee takes these views into account as you proceed with the implementing legislation for the GATT Agreement. It is critical to Armco, the specialty steel industry and all U.S. manufacturing that the final results of the implementing legislation preserve strong and effective unfair trade laws.

**STATEMENT OF HERBERT ELISH  
PRESIDENT AND CHIEF EXECUTIVE OFFICER  
WEIRTON STEEL CORPORATION**

This testimony is submitted on behalf of Weirton Steel Corporation of Weirton, West Virginia, the largest majority employee-owned manufacturing company in America. Weirton is an integrated steel mill which produces hot-rolled sheet, cold-rolled sheet, galvanized sheet, and tin mill products. The company has taken enormous and sometimes painful steps to increase productivity and remain competitive. The company has invested \$550 million in the past five years on a modernization program and has reduced its work force from 7,900 to 6,000 during that time, while producing more steel today than five years ago.

Weirton wishes to express its appreciation to the Ways and Means Committee members for the personal efforts that you and your colleagues in the House contributed during the GATT negotiations, particularly during the final days in Geneva, in order to maintain strong and effective unfair trade laws for the United States. Your help and a strong commitment by Ambassadors Kantor and Yerxa, Undersecretary Garten and the entire team of U.S. negotiators allowed the United States to avoid the potential disaster that would have occurred if the December 1991 Dunkel text had been adopted.

The countervailing duty and antidumping laws are extremely important to Weirton, as they are to the rest of American industry. In fact, the partial success of unfair trade cases on some of the flat-rolled products we produce has been a contributing factor to the increase in domestic prices and our return to profitability. The GATT Agreement, while an improvement over the Dunkel text, still weakens U.S. unfair trade laws when compared to the status quo and falls short of the goals established by Congress in 1988 Trade Act. Consequently, Congress should consider implementing language which provides the strongest and most effective trade laws permissible under the GATT Agreement. Weirton's specific concerns for the implementing legislation are set forth below.

**1. Sunset Rules**

The new GATT Agreement requires that orders be terminated after five years unless the administering authorities determine that dumping or subsidization, and injury are likely to continue or recur under the transition rules. Under the Agreement, all present orders are deemed to have an effective date as of July 1, 1995, which means that they must be reviewed no later than July 1, 2000. These reviews should normally be completed within twelve months.

The goal of Congress in implementing this provision should be to ensure that sunset reviews are not initiated by the ITC prior to the maximum time allotted by the GATT simply in order to ease the administrative burden on the ITC. In addition, in order to give domestic industries the opportunity to prevail in sunset investigations, Weirton believes U.S. law should create the rebuttable presumption that if there is a finding in previous administrative reviews that dumping or subsidization is occurring, the Commission should find that injury will continue or recur whenever there is (1) foreign excess capacity, (2) orders in effect on the same product in other countries, or (3) any other information that will lead the Commission to believe that import volumes will increase if the dumping or subsidy orders are terminated.

**2. Compensation**

Under current law, all relief from unfair trade practices is prospective. U.S. producers must demonstrate that they have been injured or are threatened with injury before antidumping or countervailing duties are imposed (with the exception of countervailing duties against a country that is not a signatory to the Subsidy Code). In fact, the ITC bases an affirmative injury determination on threat in less than 5% of cases. Therefore, before relief is granted, the industry has already suffered injury from the unfairly traded imports, including lost profits, reductions in capital available for investment, plant closings, and losses in employment. Yet, the general Treasury of the United States is the recipient of all unfair trade duties collected, and the injured industry receives nothing.



Congress should enact a compensation provision which would establish special compensation accounts at Customs from 50% of the duties collected for each antidumping or countervailing duty order. These funds would be distributed to the domestic industry for purposes such as funding pension plans or reinvesting in plant and equipment, the types of activities often affected by injurious unfair trade. The fact that orders are now subject to sunset after five years, further reducing the relief available to domestic industries, is another reason in support of this provision.

### 3. Sales Made Below Cost of Production

The GATT requires a change in U.S. practice not to discard sales made at below cost of production in determining foreign market value until over 20% of total sales are found to be below cost. Current U.S. practice allows sales below cost to be excluded after 10% of sales are found to be below cost. The GATT Agreement permits the current U.S. practice of analyzing cost over either the six month period of investigation or the twelve month period of administrative review.

Congress should include in the implementing legislation a requirement, permitted under the GATT, that the Commerce Department request cost of production information in all antidumping cases in the original questionnaires. Under the present system, the petitioners are required to demonstrate, often through painstaking analysis of product sales information, that there is evidence that sales are below cost over an extended period of time. This is a very expensive and burdensome part of investigations for the petitioners. The European Community and Canadians always ask for cost information in antidumping questionnaires. If all sales are clearly above cost, then there is no additional workload for the Commerce Department or the petitioners. An additional benefit of requiring this information is that both the Commerce Department and the petitioners will have cost information that will allow them to analyze claims for difference in merchandise adjustments put forth by responding companies.

### 4. New Constructed Value Rules

Under the present U.S. system, when over 90% of sales are found to be below cost, or where there is no home market or third country market for the product under investigation, the Commerce Department utilizes constructed values to calculate foreign market value. Constructed value is currently defined as the sum of (1) cost of manufacture, (2) actual selling, general and administrative expenses (SG&A), unless SG&A is less than 10%, in which case a statutory 10% minimum is used, (3) actual profits, unless profit is less than 8%, in which case a statutory 8% minimum is used, and (4) the cost of packing the merchandise for export. The new GATT Dumping Code provides that producer specific and product specific SG&A and profits should be used, without any minimum. If such information is not available or the producer has no sales within the ordinary course of trade, i.e., all sales have been found to be below cost, then the agreement specifies that the administering authority should base SG&A and profit on (1) the respondent's experience on home market sales of the same general category of products, (2) the weighted average experience of other producers in the home market product, or (3) any other reasonable method, but the profit so determined is capped by the profit experience of other producers on home market sales of the same general category of products.

In implementing this change in the law, Congress should give the Commerce Department the maximum flexibility to utilize either the highest profit allowed under the cap, or to avoid the cap through the use of best information available where the respondents have not provided all the information required by the

Department for them to analyze the various profit alternatives. This is necessary in order to avoid situations in which the domestic industry is significantly disadvantaged because average profits on a category of products in the country under investigation are negative or minimal.

5. Circumvention of Antidumping and Countervailing Duty Orders

The GATT Codes are silent as to circumvention. For this reason, the U.S. has the ability to both improve the circumvention provisions of the law and to expedite their enforcement by the Commerce Department. Presently, it is difficult to get at circumvention through the assembly of parts in third countries or the United States. This can be remedied through the adoption by Congress of the proposal put forth by the U.S. in the GATT negotiations.

In addition, present U.S. circumvention law has no procedural requirements. In practice, this has led to significant delays in receiving relief under this part of the statute. Congress should implement procedural requirements that mirror Department of Commerce procedures in investigations. The Department of Commerce should be required to initiate petitions filed under the circumvention provisions within thirty days, and then should be required to reach preliminary and final determinations within a nine month period. If the Department does not

itself address this issue, this would be high on the list of priorities for action by the Congress.

6. Averaging

The new GATT Agreement requires the averaging of both import prices and home market values over the period of investigation. It allows individual import prices to be compared to average foreign market prices (current practice) whenever there is a pattern of price discrimination in import prices by purchaser, region, or time period. The Agreement does not prevent the use of individual import prices in administrative reviews. Therefore, the implementing legislation should ensure that averaging is not used in administrative reviews, the assessment phase of the antidumping proceedings. In addition, Congress should require Commerce to collect individual transaction prices, including information on purchasers, regions of importation, and time period in each investigation, and set a low standard for the variance in import prices required to avoid averaging.

6. Standing

The new GATT Agreement sets requirements that petitions be filed by at least 25% of the industry and that the administering authority determine that at least 50% of the industry is in support of such petitions. In order to avoid the need for polling of the domestic industry in every case (a procedure that will add expense to petitioners and burden the Commerce Department), Congress should implement the provision so that whenever a petition is filed by more than 25% of the industry, the Commerce Department need not poll the industry unless domestic producers inform the Department that they oppose the petition within ten days after its filing. All polling and the determination on standing should be done prior to the twenty day initiation period, as it puts more time pressure on those who might be opposing petitions.

7. Exporter Sales Price (ESP) Sales and Duty as a Cost Issues

Most steel imports and imports of many other products are made by trading companies or distributors related to foreign producers. Under these circumstances, U.S. prices are established by the sale price between the related

U.S. party and the first unrelated purchaser. This price is known as Exporter Sales Price (ESP). The U.S. is unique in the world for not deducting from U.S. price a reasonable profit on ESP sales. U.S. practice does allow reduction in U.S. price for the selling expenses attributable to the related party importer, but this reduction is offset by an equal reduction to home market price for indirect selling expenses incurred by foreign producers in their home market. The U.S. is also unique among countries enforcing dumping laws in allowing this indirect selling expense offset to foreign market value. To conform U.S. practice to that of our trading partners, the implementing legislation should require that U.S.

price be reduced by the amount of a reasonable profit for ESP sales and eliminate the indirect selling expense offset to foreign market value.

In circumstances where there are related party importers, it is often the case that the antidumping duties that are assessed are not passed on to customers but are rather treated as a cost by the parent foreign company. Under the EC practice, the amount of antidumping duties is treated as a selling cost to the foreign producer, and thus a reduction in sales prices, unless the related party importer can demonstrate that the duties have been passed on to unrelated customers in the form of higher sales prices. The GATT Agreement includes a provision that recognizes the legitimacy of the EC practice. The implementing legislation should adopt the EC practice in order to eliminate the practice of foreign producers absorbing duties and to ensure the price relief that should result from the imposition of antidumping duties.

#### 8. Subsidies

The new GATT agreement substantially weakens the Subsidies Code. Among the most important changes are the green lighting of subsidies in three areas; basic and applied research; regional development subsidies; and certain environmental subsidies. These green light categories are only in effect for five years, and then are subject to review by the Subsidies Code Committee. The code also embodies additional notification procedures for subsidy programs and creates a presumption of serious prejudice for subsidies greater than 5%.

Weirton has joined with other integrated producers and other segments of the steel industry in the past in supporting a Multilateral Steel Accord that would prohibit all subsidies to the steel industry. While Weirton and other U.S. steel producers benefit from very small amounts of government funding of basic and applied research in steel, it is clear to Weirton and the rest of the steel industry that the U.S. can never match the subsidies that foreign governments grant to foreign steel producers. Therefore, Weirton has always taken the position that U.S. steel producers should willingly give up their meager government subsidies in return for the prohibition of subsidies to our foreign competitors. Clearly, the GATT Subsidies Code must be viewed as a step in the wrong direction by the domestic steel industry.

Given the Subsidies Code changes that require changes to U.S. law, Congress should make sure in the implementing legislation that the authority for green lighting these subsidies expires after five years. In addition, the implementing legislation should provide for reports to the Congress by USTR as to the actions that the Administration is taking to ensure enforcement of the notification provisions of the Subsidies Code by our foreign trading partners and the actions that USTR is taking to bring to GATT panels in instances in which subsidies greater than 5% are actionable under the serious prejudice provision presumption.

#### Conclusion

One overriding reason that the U.S. must retain strong antidumping laws is that the GATT Agreement does not affect the underlying causes of dumping into the U.S. market.



Weirton has been concerned about the dumping of tin mill products into the U.S. market and has conducted research on pricing by foreign competitors in their home markets and in the U.S. market. This research has demonstrated that for tin mill products, which constitute 40% of our shipments, prices in Japan are 30-35% higher than prices charged by Japanese producers for the same products in the U.S. market, despite relatively low Japanese tariffs. The GATT Agreement, while eliminating the already low tariffs on steel in Japan, does not in any way remove the non-tariff barriers that allow this type of price discrimination between markets to occur. There is in fact no relief available for Weirton and other U.S. manufacturers against this type of pricing behavior except for strong and effective antidumping laws.

I hope that the Committee takes these views into account as you proceed with the implementing legislation for the GATT Agreement. It is critical for Weirton, and for all U.S. manufacturers, that the final results of the implementing legislation preserve strong and effective unfair trade laws.

Chairman GIBBONS. Well, thank you. We are going to need your help. As I say, what you say is very timely, because I want us to push forward very rapidly in getting this all implemented. Considering the workload that the whole Congress has before it this year, we need to get this one done just as rapidly as possible.

You do represent critical industries here today; you have made good cases. We will try to heed your advice. Thank you very much.

Well, this concludes our hearing for today, and we will resume on February 22 at 10 o'clock in the big hearing room, Longworth 1100. Thank you very much.

Mr. SCHAGRIN. Thank you.

[Whereupon, at 1:21 p.m., the hearing was adjourned, to reconvene at 10 a.m. on Tuesday, February 22, 1994.]

## TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

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TUESDAY, FEBRUARY 22, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON TRADE,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10 a.m., in room 1100, Longworth House Office Building, Hon. Sam Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. This is a hearing of the Trade subcommittee of the Ways and Means Committee. Today's hearing is the fourth and I hope final in which the Subcommittee on Trade will take public testimony on the results of the Uruguay round.

After today's hearing, the subcommittee will have heard from over 50 witnesses representing a broad cross-section of economic interests of this country. This testimony will be of great value to the subcommittee as it moves into the next phase of the implementation process, which is to decide on a preliminary basis and in concert with the administration what should be included in the draft implementing bill. It is my expectation the subcommittee will consider the draft of an implementing bill in an informal markup session sometime during the second half of April.

I am grateful that the administration has publicly articulated its intention to enact the Uruguay round implementing legislation this year. Chairman Rostenkowski and I fully concur in this timetable and the work planning of the committee are all right on track.

With that out of the way, I would like to introduce and would like to call our first witness, Jerry Junkins, who is the CEO of Texas Instruments. Mr. Junkins announced this morning the formation of Alliance for GATT NOW, a CEO-level business group to assist us in the implementation.

Mr. Junkins, welcome to the subcommittee, and you may proceed as you wish. I have to tell you how happy my wife is with her new Texas Instruments calculator to help us keep our checkbook balanced. She particularly likes the fact it will function without having to be plugged in and still print and do all the necessary things, and so congratulations on another fine product.

Mr. JUNKINS. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Thomas, would you like to say some things?



Mr. THOMAS. We have waited 7 years for this, Mr. Chairman, and I would just as soon get started.

Chairman GIBBONS. Good. That is the spirit.

**STATEMENT OF JERRY R. JUNKINS, CHAIRMAN, ALLIANCE FOR GATT NOW, AND CHAIRMAN, INTERNATIONAL TRADE AND INVESTMENT TASK FORCE, BUSINESS ROUNDTABLE, AND CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, TEXAS INSTRUMENTS**

Mr. JUNKINS. Mr. Chairman and members of the committee, as you said, I am chief executive officer of Texas Instruments. I am appearing today on behalf of the organization that the Chairman just mentioned, the Alliance for GATT NOW. I am also testifying on behalf of the Business Roundtable. I appreciate the opportunity to speak to you about the importance of the Uruguay round agreement to U.S. industry and to the U.S. economy.

Under the umbrella of the Alliance for GATT NOW, I would note I am testifying as a representative of over 200,000 large and small companies in a wide variety of industries, companies that must operate within the rules and regulations set out by our own government and by governments around the world. We need rules to make order out of chaos in an imperfect world, but these rules have to be clear, fair and relevant. I refer you to my written statement for a detailed review of the round. As you just noted, you will hear subsequent testimony about the need to complete other negotiations in specific sectors.

Overall, we believe the GATT Uruguay round provides a much improved set of rules for the world trading system. Still, as has been noted, it is not a solution; rather, it is one more step in an ongoing effort to knock down barriers to trade and investment and world economic growth.

While I was preparing to testify today, I came across an article by Robert Samuelson that ran in the December 22 Washington Post. It was called "Why GATT Isn't Boring." Samuelson said that GATT is not boring because after 7 long years of negotiation, it "survived," and with it survived a system that helps nations "cooperate when international interdependence is inevitable."

He makes a good point, but let me tell you why I find the GATT Uruguay round boring and do not think that "boring" is such a bad thing. Rules and systems that work right are boring but they are essential to our economic health. A company can have a great product, an efficient work force and good financial backing and still be defeated by the environment in which it must operate. The real killers for international businesses like ours are: Bad rules, rules that do not reflect current reality and rules that do not apply to everyone.

Let me talk briefly about the rules system we have now and what the Uruguay round agreement will do.

First, what do I mean by bad rules? These are laws that require companies to agree to source locally or meet export quotas before investment can be made. I mean product standards that have no scientific basis and serve only to erect a barrier to competitive foreign products. Such rules lead to inefficiencies and, frankly, cost jobs. Uruguay round agreement will not eliminate all those rules

but it will make it more difficult for countries to impose investment restrictions that distort trade and inhibit job creation. It will also set up mechanisms to ensure greater transparency in standard setting and provide a means of challenging unreasonable standards.

Another important facet of the Uruguay round agreement is that it will create new disciplines in areas where they are desperately needed now, even though they may not have been needed in the past. The inclusion of an intellectual property code in the GATT system is an important one, particularly for our company. Success in our industry depends on constant innovation in design and process technology, and that is why we have poured almost \$600 million into research and development last year and 568 patent applications in the United States. If our competitors abroad are able to infringe our patents, we lose the benefit of our investment. We also lose the incentive and ability to make new investments. Countries that sign the Uruguay round agreement and become members of the World Trade Organization promise to enact laws that protect the ideas on which our businesses are built.

As for rules that do not apply to everyone, the current system is full of them. Until now, GATT signatory countries could pick and choose which codes to sign on to. For example, only 25 of 115 GATT contracting parties have signed on to the GATT Subsidies Code, and only 46 are signed on to the GATT standards agreement. There are a lot of free riders out there who have tickets without paying for the admission. Under this agreement, the price of admission into the new World Trade Organization is adherence to codes. Now, yes, there are a few exceptions, but they have been severely limited.

For American business, the Uruguay round means increased fairness and order in the marketplace, not a perfect marketplace. For our company the increase in trade resulting from a more open world market could translate into additional revenues of about \$5 billion over the next 10 years. In other words, implementation of this could contribute maybe 6 percent of our revenues by the year 2004 and support 2,000 to 3,000 new jobs, largely in the United States.

Let us not delude ourselves that this agreement is the perfect fix. The United States must continue to pursue policies that address the shortcomings of the round and keep the pressure on our trading partners to remove trade and investment barriers.

Quickly, among these policies are: First, to preserve U.S. rights to take unilateral action to open closed foreign markets. That is a major challenge as far as drafting the legislation.

Also, there is more to be done and we should extend negotiating authority to continue bilateral and multilateral trade initiatives. We need to expand the NAFTA to appropriate countries in Latin America and continue bilateral initiatives that facilitate international trade and investment and pay particular attention to Asia, where many of the world's fastest-growing economies are developing.

Now, I am reminded of the Chinese curse that seems to be quoted a lot these days, which says, "May you live in interesting times." Agreements that make incremental improvements in rules systems are boring by definition. And if the Uruguay round agree-

ment will help us avoid trade conflicts while expanding world economic growth, then I am ready to opt for boredom.

There is one more point I would like to make. As has just been noted, Congress needs to put this agreement into place this year. We cannot afford to let it sit for months without implementing it, and we should not and cannot afford to weigh it down with superfluous amendments. If we do, we may challenge somebody to think of a way to make this agreement more interesting.

Thank you, Mr. Chairman.

[The prepared statement follows:]



**STATEMENT OF JERRY R. JUNKINS  
CHAIRMAN, PRESIDENT & CHIEF EXECUTIVE OFFICER  
TEXAS INSTRUMENTS**

**ON BEHALF OF THE ALLIANCE FOR GATT NOW  
AND THE BUSINESS ROUNDTABLE**

INTRODUCTION

Mr. Chairman and members of the Committee, I am Jerry R. Junkins, Chairman, President and Chief Executive Officer of Texas Instruments. I am appearing today on behalf of the Alliance for GATT NOW. I am also testifying on behalf of the Business Roundtable. Thank you for giving me this opportunity to speak to you about the importance of the Uruguay Round Agreement to U.S. industry and to the U.S. economy.

I would also note that I am testifying as a representative of over 200 thousand large and small companies in a wide variety of industries, companies that must operate within the rules and regulations set out by our own government and by governments around the world. We need rules to make order out of chaos in an imperfect world. But these rules have to be clear, fair and relevant.

We believe that the GATT Uruguay Round Agreement provides, on balance, a much improved set of rules for the world trading system. The advances made in the Uruguay Round will create a more open trade and investment environment and provide opportunities for U.S. companies and workers in a wide variety of industries. The increase in trade once the Uruguay Round Agreement is fully implemented will create hundreds of thousands of high-wage, high-skill jobs in the United States, and pump an estimated \$200 billion into the U.S. economy. Overall, we support the Uruguay Round, and believe that the liberalization of trade and investment achieved should be locked in through prompt approval and implementation by the United States and other countries.

Nevertheless, the Uruguay Round Agreement is not a solution. Rather, it is one more step in an ongoing effort to knock down barriers to trade and investment and expand world economic growth. Some important objectives have not been met within the Round itself, and final commitments in some sectors have not yet been tabled. In addition, legislation implementing the agreement must be carefully crafted to reflect concerns that have been raised about certain sections of the agreement, without undermining the commitments made in Geneva. The business community hopes and expects that the U.S. Government will aggressively seek further progress in the ongoing negotiations, craft balanced implementing legislation and, where U.S. goals are not achieved, continue to press for liberalization afterward.

IMPORTANCE OF TRADE AND INVESTMENT

International trade is increasingly a major engine of U.S. economic growth. Over a quarter of the U.S. economy now depends on trade. By expanding sales abroad, we create new jobs and opportunities at home, and expand our own economy. While U.S. exports accounted for 5.3 percent of U.S. economic output in 1970, they had risen to account for 13 percent by 1993. From 1988 to 1993, U.S. exports accounted for about 50 percent of total U.S. economic growth. The jobs related to trade earn, on average, 17 percent more than jobs not related to trade. Overall, the U.S. has created over 18 million net new jobs in the past 10 years, while Japan has created 8 million and Europe has created 6.9 million.

International investment similarly benefits the U.S. economy. U.S. companies with the largest foreign investments abroad have run trade surpluses in recent years (\$79 billion in 1990), even as the country as a whole has run trade deficits (\$152 billion in 1990). Their surpluses have been the highest with countries in which they have the largest foreign investments. At the same time, foreign investment in the United States has spurred U.S. competitiveness and productivity, by encouraging U.S. businesses to concentrate their U.S. activities in those areas in which U.S. workers are most efficient. U.S. investment abroad also supports high-wage U.S. managerial, research and development, and skilled manufacturing jobs that might otherwise have been lost to competitors in other countries.

## IMPORTANCE OF THE URUGUAY ROUND FOR U.S. COMPANIES AND WORKERS

Over the past decade, U.S. companies and their workers have become increasingly competitive in world markets. They have undertaken the arduous and often painful task of restructuring to meet the challenge of overseas competitors. As a result, U.S. workers are now the most productive in the world. Even the Japanese realize this: for example, Professor Terumasa Nakanishi of Shizuoka University was quoted in the February 10, 1994 Washington Post as saying, "There's a sense that American industry has really changed in the past few years. The Japanese now understand that America is the toughest competitor in markets around the world." Indeed, in the area of technology intensive industries, the U.S. trade balance has improved from a deficit of \$25 billion in 1986 to a record surplus of \$64 billion in 1991.

The Uruguay Round gives American companies and their workers the chance to capitalize on their increased competitiveness through increased access to world markets. For Texas Instruments (TI) the increase in trade resulting from a more open world market could translate into additional revenues of about \$5 billion over the next 10 years. In other words, implementation of the Uruguay Round could contribute 6 percent of TI's revenues by the year 2004 and support 2,000 to 3,000 new jobs, largely in the U.S. Now would be the worst time to succumb to the temptation of protectionism, and to fail to implement the Uruguay Round Agreement.

## URUGUAY ROUND RESULTS

The Uruguay Round has resulted in the most comprehensive multilateral agreements to date on the reduction of barriers to trade and investment. It is inevitable in complex agreements of this nature that there will be many technical or ambiguous provisions. The following discussion is an overview and not a technical analysis.

**Market Access.** The Uruguay Round will benefit the U.S. by significantly reducing or eliminating tariffs on a wide range of products affecting 85 percent of world trade, including:

construction equipment	agricultural equipment
medical equipment	steel
beer	distilled spirits (except pharmaceuticals)
paper	white spirits and liqueurs)
furniture	toys

Overall, developed country tariffs will be reduced by approximately one third. On exports from the United States and the European Union, the reduction is over 50 percent. And deep cuts of 50 - 100 percent have been achieved for important electronics products, such as computer parts and semiconductor manufacturing equipment. Some products, such as textiles and apparel, have been subjected to liberalizing commitments under the GATT for the first time. The U.S. objective of completely eliminating, or significantly reducing, tariffs with many major U.S. trading partners has, therefore, been achieved for many of the targeted products.

There are, however, some sectors where sufficient tariff cuts have not been achieved in enough significant countries. Among these sectors are wood products, autos and auto parts, non-ferrous metals (such as copper and aluminum), chemicals, and textiles and apparel. While we support the market access agreement, on balance, continued efforts to gain further tariff eliminations and reductions in the remaining negotiations are essential.

**Government Procurement.** Assuming that negotiations for the Agreement on Government Procurement can be successfully concluded, U.S. access to government contracts in key sectors within signatory countries will be significantly improved. Coverage would be expanded to include government-owned utilities and some sub-national government bodies. Also, government procurement disciplines would apply to services and construction for the first

time. However, because members of the World Trade Organization ("WTO") will not be required to join the Agreement on Government Procurement, limited participation will remain a drawback. The U.S. Government should, therefore, seek to extend coverage of the agreement through bilateral negotiations in future.

**Services.** The Uruguay Round has the potential to benefit the U.S. economy significantly by including trade in services under the auspices of the GATT for the first time. The services sector represents 60 percent of the U.S. economy and 70 percent of American jobs. U.S. trade in services achieved a trade surplus of \$61 billion in 1992 on exports of approximately \$180 billion.

The new General Agreement on Trade in Services ("GATS") establishes a framework of disciplines that will apply to all WTO members. The GATS also includes substantial liberalizing commitments in some sectors, such as accounting, engineering, construction, computer services, retailing and wholesaling, education, tourism, and health services. However, we are deeply disappointed that substantial market access commitments were not achieved in critical service sectors, including financial, basic telecommunications, or audiovisual services. We are pleased that the United States retained leverage in these areas, and strongly support the commitment by U.S. negotiators to press for substantial progress in these sectors.

**Investment.** The Uruguay Round agreement on investment extends GATT disciplines to investment for the first time. Certain trade distorting trade-related investment measures ("TRIMs") are expressly prohibited, including local content requirements, export performance requirements, and trade balancing requirements. However, other important TRIMs will remain, such as production requirements and technology transfer requirements, as well as other investment restrictions that the Uruguay Round did not attempt to address, such as equity restrictions. We support the agreement on TRIMs, but believe that U.S. negotiators must press for more comprehensive liberalization of investment, with an increasing focus on the expansion of NAFTA and other promising measures.

**Intellectual Property.** The Uruguay Round represents a substantial step forward in the international protection of intellectual property, which is especially important for U.S. companies utilizing advanced technologies. These protections are essential to stem massive losses to the U.S. economy and to U.S. job growth through the piracy of intellectual property rights. The losses due to intellectual property piracy in 1992 alone have been estimated at \$15-17 billion.

The Uruguay Round binds all WTO members to maintain a wide variety of intellectual property protections. Nonetheless, some U.S. objectives were not met. For example, the European Union has denied national treatment for certain intellectual property rights holders. Additionally, the agreement provides for overly long transition periods, resulting in significant losses to our economy.

On balance, the intellectual property agreement is still an important achievement. Nevertheless, the U.S. Government should continue to seek further improvements in intellectual property protection through bilateral and multilateral negotiations between now and July 1, 1995, when the agreement is scheduled to take effect, and thereafter.

**Antidumping.** The agreement provides for increased transparency in antidumping proceedings by requiring investigating authorities to provide public notice and written explanations of their actions. At the same time, the agreement expressly authorizes the International Trade Commission's practice of cumulating imports from different countries in determining injury to domestic industry, and establishes an explicit standard of review. New international disciplines will curb abuses abroad that harm the global competitiveness of U.S. companies.

**Subsidies and Countervailing Duties.** The Uruguay Round agreement on subsidies and countervailing duties has the potential to improve the international discipline of subsidies. However, reassessment or elimination of the provisional measures will be necessary at the end of the five-year review period. For example, provisions making certain environmental



subsidies non-actionable and excluding the aircraft sector from certain subsidy disciplines should be eliminated.

**Safeguards.** The Uruguay Round agreement on safeguard measures will ensure that stringent standards and procedures are used before safeguard measures are employed. These standards will include the requirement of serious injury to the affected industry and a causal link between the injury and imports. The agreement also provides for the suspension of the automatic right to retaliate for the first three years of a safeguard measure, creating an incentive for countries to use the new, stringent WTO safeguard procedures when import-related injury to domestic industry occurs.

**Agriculture.** The Uruguay Round achieves substantial progress in eliminating distorting elements of international trade in agricultural products. For the first time, agricultural trade is subjected to general GATT principles, effective for all WTO members. U.S. export opportunities will be enhanced through limitations on foreign export and other subsidies, as well as limitations on the ability of foreign governments to block imports through tariffs, quotas, and a variety of non-tariff barriers. While final tariff schedules have not yet been submitted, it appears that substantial reductions in tariffs will be achieved for a wide variety of products.

**Other Non-Tariff Barriers.** The Uruguay Round achieves improved disciplines on a wide range of other non-tariff barriers that hinder U.S. exports. Non-tariff barriers addressed include sanitary and phytosanitary measures, technical barriers to trade, customs valuation, pre-shipment inspection, import licensing, abuses by state-owned enterprises, and national responses to balance-of-payments crises. The improved disciplines will facilitate a more open world trading system.

**Trade Policy Review Mechanism.** The business community is pleased that the Uruguay Round makes permanent the Trade Policy Review Mechanism ("TPRM"), started in 1989. The TPRM creates a mechanism for regular review, permitting violations of existing obligations of GATT members to be uncovered and highlighted. We believe, however, that effective steps should be taken to assure that GATT-violative practices of WTO members, once uncovered through the TPRM, are eliminated.

**World Trade Organization.** The Uruguay Round establishes a permanent institutional structure, covering nearly all GATT-related agreements, for the first time since the founding of the GATT in 1947. This consolidation under the WTO should streamline oversight and facilitate the use of cross-retaliation among different trade sectors when a country does not fulfill its obligations. The WTO will also help resolve the free-rider problem in the world trading system by requiring members to adhere to all of the major agreements of the Uruguay Round.

**Dispute Resolution.** The Uruguay Round dispute settlement system meets most U.S. negotiating objectives. The new dispute resolution process will be faster -- the entire process can be completed within 16 months from the request for consultations even, if there is an appeal -- thanks to the use of specific deadlines. It will also be stronger, because a panel decision will now be binding unless the WTO members decide by consensus to reject it. Thus, dispute settlement decisions can no longer be blocked, as was the case under the old GATT agreement. In addition, transparency is improved, and the principle of cross-retaliation is enshrined in a manner that will help assure effective enforcement. Despite these significant strides, appropriate implementing legislation is necessary to prevent any forfeiture of U.S. rights to lever open closed foreign markets where multilateral agreements fail to do so.

**Conclusion.** On balance, the Uruguay Round agreements represent the significant achievement of many U.S. objectives and the overall advancement of the U.S. economic interest. However, the business community recognizes that some important objectives have not been met. With the recognition that negotiations on some issues are ongoing, the understanding that implementing legislation must be carefully crafted and the expectation that the U.S. Government will seek to address shortcomings both during these negotiations and afterward, we endorse the Uruguay Round Agreement and urge prompt implementation by the Congress.

### CONTINUING UNITED STATES INITIATIVES

The significant progress in the Uruguay Round, while meriting strong U.S. support, does not enable the United States to declare victory and become inactive in international economic policy. Many important U.S. objectives remain unfulfilled and new challenges and opportunities loom ahead. We recognize that many other important issues, such as health care reform, are on the U.S. agenda. Nevertheless, the United States cannot afford to lose sight of the fundamental importance of trade liberalization to the health of the U.S. economy. The United States must, therefore, follow-up on the achievements of the Uruguay Round, and keep trade issues high on the U.S. agenda in the coming months and years.

Foremost among these issues is the need for the U.S. and other governments to assure effective implementation of each country's commitments in the Uruguay Round, without which the agreements are meaningless. In addition, U.S. negotiators must continue to push for progress on significant issues from the Uruguay Round negotiations that will remain the subject of ongoing negotiations, such as market access for highly competitive U.S. service industries. At the same time, the U.S. Government must carefully monitor the newly formed World Trade Organization to ensure that it is effective, impartial, and non-bureaucratic.

The Administration already has suggested the possibility of a new round of GATT negotiations to address competition, environmental, and labor rules and standards. We agree that these issues are important. However, moving precipitously to multilateral negotiation on these issues may impede consolidating and building on the results of the Uruguay Round, which has not yet been signed, much less implemented. In addition, as the NAFTA debate showed in regard to labor and the environment, achieving real progress will require careful consideration and consultation with affected parties in the private sector. Premature initiation of multilateral negotiations in the absence of adequate consultations and consideration may make more difficult or even prevent the development of a consensus.

The United States will do better to concentrate efforts in the immediate future on the Uruguay Round's implementation, follow-up, and implications. In addition to the efforts described in the foregoing, such efforts should include steps outside the multilateral process to capitalize on the successes and remedy the shortcomings of the Round.

First, U.S. rights to take unilateral action to open closed foreign markets must be preserved. There has been much discussion regarding whether the new dispute resolution procedures, combined with the increased scope of the multilateral trading system, will combine to restrict the ability of the United States to take unilateral action to open closed foreign markets. This question would raise less concern if all of the strong substantive disciplines sought by the United States in the Uruguay Round had been achieved. However, some disciplines were not adopted and other provisions are ambiguous. Thus, it is imperative that Congress take action in the implementing legislation to prevent any forfeiture of U.S. unilateral rights, to open foreign markets.

Second, because the Uruguay Round implementing legislation is likely to be the only major implementing legislation for some time, it should include appropriate negotiating authority to continue bilateral and multilateral trade initiatives to promote U.S. economic interests.

Third, the United States should move quickly to expand the NAFTA to appropriate individual countries in Latin America. The NAFTA sets excellent standards for liberalization of international trade and investment, going beyond those which were achieved in the Uruguay Round. By moving rapidly to expand the NAFTA to countries that are ready for its disciplines, the United States can create a critical mass to pressure other countries in Latin America and other parts of the world that are reluctant to liberalize. Careful evaluation to identify which countries are ready for the NAFTA should proceed along the timetables that were established by Congress in the NAFTA implementing legislation. The upcoming Western Hemisphere Summit provides an excellent opportunity to make clear that the United States will move promptly in this regard.

Fourth, the U.S. Government should continue to pursue bilateral initiatives that facilitate international trade and investment, such as the Bilateral Investment Treaty program. These initiatives will help build international support for principles that were not accepted in the Uruguay Round.

Fifth, the U.S. Government should pay special attention to Asia, where many of the world's fastest growing economies are developing. We support U.S. efforts to transform the Asia Pacific Economic Cooperation ("APEC") into a more formal policy-oriented forum for trade and investment liberalization. Beyond APEC, we support initiatives to improve economic relations and foster liberalization with the Southeast Asian nations, to improve economic relations with China on a basis that liberalizes Chinese markets for U.S. exports and investment, to gain real access to Japanese markets, to improve market access and treatment of U.S. investment and intellectual property rights in Hong Kong, Korea, and Taiwan, and to normalize economic relations with Vietnam.

Finally, the U.S. Government should accelerate efforts to accord sufficient weight to U.S. commercial concerns in considering the use of economic tools to achieve foreign policy objectives. Given that economic security is a cornerstone of overall U.S. national security, commercial concerns should be a critical factor in foreign policy decisions, such as U.S. export controls and linking trade and investment to foreign political and social objectives. While achieving foreign policy objectives in some circumstances may warrant economic sacrifices, U.S. policy should ensure that the benefits actually achieved outweigh the costs to U.S. standards of living and economic security.

These initiatives will help maintain the positive momentum in U.S. economic relations that has been generated by the NAFTA and the conclusion of the Uruguay Round negotiations. We look forward to working with the Administration and the Congress on these initiatives with confidence in the benefits they will bring for U.S. economic growth and competitiveness.



Chairman GIBBONS. Mr. Junkins, first of all, I am very grateful to you for having volunteered your services and your skills to helping us get this implemented. It is very important, as you say, as all of us say. And I appreciate your explanation to me; it has made my job a little better.

I am one who believes that one of the fastest ways to build a better world is through business and commerce, because we can accomplish so much in business and commerce that we cannot overcome with all of the scar tissue we get from politics, religion, and the other things.

Commerce has a common theme that penetrates this huge worldwide scar tissue and rough edges that we get with world politics, and geopolitics, and our religious differences. And so I am a great believer that what you are doing as a businessperson, helping to spread understanding, to spread better rules of engagement and operations are very helpful in building a viable peaceful world. So I salute you for that.

I don't have any questions about your testimony.

Mr. Thomas, would you like to question?

Mr. THOMAS. Thank you, Mr. Chairman.

I just want to congratulate you for coming out front with a structure that is forthright about how positive the new GATT is, nevertheless how deficient it is in some areas that we had hoped we could work on.

We have some critics, Ralph Nader not being the least of which, who are out there, and frankly these folks have an ability to command the airwaves and say things for which they, I assume, believe, but I think have enormous negative impact in the climate for understanding for what it is we have reached in this agreement.

So I just want to thank you for coming out front as forthrightly as you have. We have some internal funding mechanism problems that we will, I am quite sure, be able to work out if we do it in a responsible enough way. But your message from the beginning about the advantages of this new agreement are going to go a long way toward getting the media to at least understand and put in context the criticisms that will inevitably come up and I want to thank you very much for your willingness to take the heat. You are going to take the benefit, but I appreciate you are willing to take the heat at the same time.

Thank you.

Chairman GIBBONS. Yes, sir, thank you for calling on us. We will work together.

Mr. JUNKINS. Thank you.

Chairman GIBBONS. Let's go next to Mr. Lewis and Mr. Mossinghoff in a panel of the National Association of Manufacturers and Pharmaceutical Manufacturers.

Mr. Lewis, we will go to you first.

#### **STATEMENT OF HOWARD LEWIS III, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS**

Mr. LEWIS. Thank you very much, Mr. Chairman.

The fundamental point I want to make throughout my testimony this morning is that the National Association of Manufacturers

strongly supports the Uruguay round agreement and urges Congress to draft and approve implementing legislation as soon as possible.

We are grateful to you and other members of the subcommittee for the tremendous leadership you have shown throughout the Uruguay round. It is because of that leadership that we are encouraged in our hope that the Uruguay round will be acted upon soon this year.

Before commenting on the agreement, I would like to note three characteristics of American trade. First, manufactured goods account for roughly 80 percent of total U.S. merchandise trade. In other words, anything that affects international trade affects U.S. manufacturers.

Second, U.S. exports are enormously diversified. Roughly a quarter goes to North America, a quarter to the Pacific rim, a quarter to Western Europe, and a quarter to the rest of the world. The United States, therefore, does need a global trading system.

And, third, as Mr. Junkins just pointed out, exports are absolutely critical to U.S. economic growth at this time in our history. Now, let me turn to the GATT and make a few brief comments.

Earlier this month the NAM board of directors passed a resolution endorsing the Uruguay round. The resolution, which is the underlying basis of my comments this morning, talks about a number of provisions. However, the three main reasons that NAM supports the rounds are these:

One, the round represents a reaffirmation and strengthening of the GATT centered and rule based international trading system; two, it will promote increased economic growth throughout the world; and, three, it will mean expanding market opportunities for U.S. firms.

This last point, of course, is dramatically underscored by the significant success our negotiators had in their pursuit of the zero-for-zero tariff agreements in a number of sectors, such as construction equipment, medical equipment, pharmaceuticals and paper.

As others have noted, the expansion of GATT rules to new commercial areas, such as investment, services, and protection of intellectual property rights, is an enormous step forward for the international trading system. Those issues are discussed more fully in my written testimony.

In the time remaining, Mr. Chairman, I want to comment on a few of the issues that have become or are likely to become especially important to Congress in its consideration of the Uruguay round and the implementing legislation.

Subsidies: NAM recognizes the danger in the subsidies agreements, namely that the new safe harbors or green lights for certain regional assistance, research and environmentally related subsidies may be abused. These provisions should be carefully monitored. If they are abused they can be terminated after 5 years under the agreement.

On the other hand, we attach great importance to the fact that this agreement for the first time gives American exporters real protection against subsidized competition in third country markets. Currently such protection, as you know, Mr. Chairman, is only pro-

vided for those who are affected by unfair subsidies in the U.S. market.

Section 301 and dispute settlement: For the record, Mr. Chairman, I would like to note that the NAM supports the creation of the World Trade Organization and that we believe that the GATT has been greatly strengthened by the proposed new dispute settlement rules. On the other hand, we want to make it very clear that in our view nothing in the round bars the United States from acting unilaterally under section 301 in those cases where the administration deems such action appropriate.

The budget issue: We are very aware of the fact that one large obstacle to congressional approval of a Uruguay round implementing bill is the perceived need to find revenue to pay for it. As already indicated, we believe that the actual effect of the GATT will be to boost economic activity in the United States and that this will increase not decrease revenue to the treasury.

If the Congressional Budget Office were directed to use a dynamic rather than a static analysis in assessing the revenue effects of the round, the current cost of the round would quickly transform itself into a benefit. We hope such direction will be given.

The scope of the implementing bill: As I mentioned earlier, Mr. Chairman, NAM hopes that Congress will approve an implementing bill before the August recess. There are a number of provisions such a bill could contain beyond those that are clearly necessary to the implementing of the GATT round.

There are many such provisions that NAM would welcome. We would like to see new negotiating authority, we would like to see a provision to redress the unfortunate tilt to the international playingfield caused by the environmental subsidies provision, and, if it were possible, we would like to see the repeal of the Jackson-Vanik amendment.

Yet, in candor, our principal goal today is to see the Uruguay round implemented, and we would not argue for any extraneous provisions that might slow down or inhibit the process of implementing the basic agreement. We would like to use this opportunity to urge the administration and Congress to define the scope of the implementing legislation as soon as possible. We are concerned that delay in doing so may encourage unnecessary and harmful controversy over nonessential provisions.

Thank you for the opportunity to testify. We look forward to working with you on the implementing legislation.

[The prepared statement follows:]



TESTIMONY OF  
**HOWARD LEWIS III**  
 VICE PRESIDENT FOR INTERNATIONAL ECONOMIC AFFAIRS  
 NATIONAL ASSOCIATION OF MANUFACTURERS

ON  
 THE URUGUAY ROUND

BEFORE THE  
 SUBCOMMITTEE ON TRADE  
 OF THE  
 COMMITTEE ON WAYS AND MEANS  
 U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.  
 FEBRUARY 22, 1994

Mr. Chairman, Members of the Subcommittee, my name is Howard Lewis, and I am the Vice President for International Economic Affairs at the National Association of Manufacturers. Founded in 1895, the NAM is America's oldest, broad-based, national trade association. Its more than 12,000 member companies account for approximately 80 percent of U.S. manufacturing output and jobs.

Mr. Chairman, the NAM believes that the Uruguay Round agreement, concluded in Geneva on December 15, 1993, is clearly in the interest of American manufacturers. We strongly support it, and urge you and your colleagues to draft and approve implementing legislation as soon as possible. You, Mr. Chairman, and Chairman Rostenkowski have shown tremendous leadership throughout the long Uruguay Round process and in the weeks that have followed the decisive meeting of the GATT Contracting Parties in December. Because of that leadership, we are encouraged in our hope that a Uruguay Round implementing bill will be approved this year.

**MANUFACTURING AND AMERICAN TRADE**

Before I turn to a discussion of the Uruguay Round itself, it is worth highlighting three characteristics about U.S. trade. The first is that manufactured goods account for the lion's share of both U.S. exports and U.S. imports. The second is that U.S. trade is geographically very diversified. And the third is that exports have become critical to U.S. economic growth. A few numbers should make these points clearer.

**Manufacturing's Share.** Manufactured goods accounted for 81 percent of U.S. merchandise trade in 1993, 78 percent of our exports and 82 percent of our imports.

**Export Diversity.** Again looking at 1993, 31 percent of our exports went to our two North American trading partners, Canada and Mexico. Twenty-eight percent went to the Pacific Rim. Twenty-four percent to Western Europe, and 17 percent to the rest of the world.

**Exports and Growth.** This past December's strong export showing -- \$42 billion -- underscores the fact that the economic recovery in the United States is being fueled by exports as much as by domestic spending. It also suggests that the economies of our major trading partners are following the United States on an upward trend. Exports supported at least 200,000 U.S. jobs last year, and our estimate is that roughly 27 percent of the stunning 5.9 percent growth of the '93 fourth quarter growth was due to exports.

The numbers on the importance of manufactured goods in U.S. trade speak for themselves, as do the data that relate international trade to the domestic economy. The fact that the pie-chart of our exports shows strong exports to every major region underscores that the United States is not a regional trading country any more than it is a regional military power. Our interests are global. The existence of a strong global trading system is therefore very much in the interest of American manufacturers, and we believe it is in the interest of the United States.

### THE ASSESSMENT OF THE NAM BOARD

Earlier this month, the Board of Directors of the National Association of Manufacturers passed a resolution endorsing the Uruguay Round and calling for Congressional approval of an implementing bill as soon as possible. That resolution, which is the underlying basis for this testimony, comments on a number of provisions in the Uruguay Round. The main three reasons that the NAM supports the Uruguay Round, however, are that:

- i) The Uruguay Round represents a reaffirmation and strengthening of the GATT-centered and rule based international trading system.
- ii) It is likely to promote increased economic growth throughout the world.
- iii) And, it will mean expanded market opportunities for American exporters.

To be sure, NAM members have a number of concerns about the Uruguay Round and see in it new risks and new problems as well as new opportunities. It is, nevertheless, our strongly held view that the adoption and implementation of the Uruguay Round final agreement is dramatically preferable to rejecting it. And from our perspective, those are the choices. We do not believe that there is any realistic hope of reopening or renegotiating those portions of the Uruguay Round that are currently regarded as settled. Moreover, we see only new dangers in any attempt to do so.

At this point, Mr. Chairman, I should like to share with the Subcommittee NAM's views on some of the more salient aspects of the final Uruguay Round agreement for manufacturing.

### THE WORLD TRADE ORGANIZATION AND SECTION 301

We very much welcome the creation of the World Trade Organization (WTO). As you know, the framers of the General Agreement on Tariffs and Trade had intended that it should operate in conjunction with an international trade organization, and in a number of respects, GATT itself has functioned as an institution as well as an agreement. The time has come, however, to give the GATT institution a clear legal structure, and this is done in the creation of the WTO. This is particularly important now that the GATT has been expanded to cover trade in services, agriculture, trade related investment measures, and trade related aspects of intellectual property. The United States is a signatory to all GATT codes, all of which impose certain disciplines on the participating parties. The WTO requires that all of its members accept all of the multilateral obligations. This is a very positive development, one which will largely eliminate the "free rider" problem insofar as the rules of the GATT are concerned. In other words, countries that want the benefits of GATT/WTO membership will have to accept all of the multilateral obligations associated with such membership.

We also regard the proposed World Trade Organization as integral to the strengthened and more credible GATT dispute settlement mechanism. Moreover, it provides a process for amending the GATT that may be less cumbersome than the current system of negotiating rounds. In addition, we hope and expect that the World Trade Organization will ensure greater coordination of world trade, monetary, and development policies, especially to the extent that those policies are expressed through the work of the World Trade Organization, the International Monetary Fund, and the International Bank for Reconstruction and Development.

I must note too, though, that the NAM has two concerns with respect to the World Trade Organization and the GATT dispute settlement process. First, we are concerned about the potential for the GATT bureaucracy to become unduly independent and the champion of its own agenda. It should be the goal of the U.S. Government to ensure that this does not happen.

**Section 301.** Second, we are concerned that some U.S. trading partners see the new GATT rules as a means of depriving the United States of the effective use of Section 301 of the 1974 Trade Act. For us, Section 301 is an important tool of U.S. trade policy for opening foreign markets. We hope that the Administration and the Congress will ensure its continued viability and effectiveness with appropriate language in the legislation implementing the Uruguay Round.

We emphatically do not accept the argument that acceptance of the Uruguay Round agreement would diminish the sovereign right of the United States to restrict imports or take other appropriate actions under Section 301. I would note that Section 301, as it stands today, expressly assumes that the President will consider the likely consequences of the use of the powers granted to him and to the U.S. Trade Representative under Section 301.

#### MARKET ACCESS

One of the most significant achievements of the Uruguay Round agreement for U.S. manufacturers is the substantial tariff reductions worldwide that have already been pledged. These commitments constitute roughly a one-third reduction in world tariffs and will provide significant new export opportunities for U.S. manufacturers in several sectors.

The NAM supported the objectives of the Zero-for-Zero Tariff Coalition, *i.e.*, reciprocal tariff eliminations by our major trading partners in a number of sectors. The goals of the Zero Tariff Coalition were largely achieved in many sectors, notably:

construction equipment,	furniture,
agricultural equipment,	paper,
medical equipment,	pharmaceuticals,
beer,	steel, and
certain distilled spirits,	toys.

In addition, the electronics sector, while not achieving zero tariffs in all areas desired, achieved significant tariff reductions in the agreement.

The recent NAM Board of Directors meeting, which I mentioned, occurred during the first week of this month. The Directors made it very clear that they attached a great deal of importance to the goal of achieving further progress in those market access negotiations that are still continuing. They emphasized especially the hope for tariff reductions abroad in the areas of textiles, chemicals, automobiles, auto parts, heavy trucks, wood products, copper, and white distilled spirits.

At this point, the February 15 Uruguay Round deadline for the submission of tariff offers has passed, and it is not yet clear to us how much progress, if any, has been made. I can, therefore, only reiterate that the NAM believes it is extremely important that there be further progress, that is, lower foreign tariffs in the areas referred to above.

I would also note that, from our perspective, the benefit of existing offers -- and hence the value of the Uruguay Round to certain industries -- may depend as much on how quickly tariff reductions are phased in as on the final levels of individual tariff offers.

Separately, there were areas, such as steel where the value of zero-for-zero tariff arrangements is less than had been hoped for because certain parallel objectives were not achieved.

The steel industry in the United States supported the concept of zero-for-zero tariffs in steel on the assumption that negotiations would also produce a multilateral steel agreement (MSA). Zero-for-zero tariffs in steel were obtained in regard to most, but not all, major steel producing countries. However, a comprehensive, effective and enforceable MSA was not achieved. As a consequence, the new tariff arrangements are of less clear value to the U.S. steel industry than they might otherwise be.

**Preshipment Inspection.** The achievement of an agreement on the use of preshipment inspection companies represents a long-sought goal of the NAM. The activities of these companies have in the past posed serious market access problems for some NAM companies, especially those exporting to developing-country markets. We are very pleased that the practices of preshipment inspection companies will henceforth be subject to GATT discipline.

#### INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property, Including Trade In Counterfeit Goods, is unquestionably a major advance in international trade law.



While the agreement will require changes in U.S. patent law, it will also dramatically enhance the protections for U.S. patents, trademarks, copyrights, semiconductor chip layout designs and trade secrets around the world. The NAM is pleased that the TRIPS agreement also expressly forbids compulsory licensing of patents and layout designs of semiconductor technology for commercial purposes.

We are disappointed, however, that the unduly long and discriminatory phase-in periods of the Dunkel Draft were carried over into the final Uruguay Round agreements. It is distressing to us that developing countries will have a full ten years to pass laws implementing the key portions of this agreement. This will mean that certain U.S. industries and U.S. products -- specifically pharmaceuticals -- will have no intellectual property rights protection under the GATT for a decade or more in important markets in Asia, Africa and Latin America.

We believe, though, that Article 70.8 of the TRIPS agreement provides a stop-gap patent registration measure, which may offset some of the harm done by the long phase-in period of the agreement mentioned above. We urge the Congress and the Administration to ensure that U.S. companies get the maximum benefits of this provision.

We are also disappointed that no progress was made on key audio-visual issues, such as the European Union's special levy on audio-visual tapes and other forms of discrimination against U.S. artists and producers.

We expect the U.S. Government to use whatever means it may have to offset these deficiencies in the TRIPS agreement and to minimize the commercial risks to U.S. companies regarding the treatment abroad of U.S. intellectual property.

## **SERVICES**

The new General Agreement on Trade in Services is also a major advance in international trade law. Because of this agreement, trade in services will now, for the first time, be governed by the same basic rules that govern trade in goods. The NAM welcomes the fact that the services framework agreement is accompanied by significant commitments from U.S. trading partners in areas of special importance to manufacturing, notably trade in professional services, such as engineering and accounting services, and trade in enhanced telecommunications services.

We are disappointed and concerned, however, that there is no audio-visual component to the European Union's schedule of commitments under the Services Agreement. This means, for example, that the European broadcast quotas could stay in place indefinitely. We expect the U.S. Government to use whatever means it may have to correct this omission and to end the European Union's discrimination against U.S. products in this sector.

Finally, we encourage the U.S. Government to take advantage of the extended negotiations in financial services, basic telecommunications services, and maritime services to achieve maximum levels of trade liberalization from other countries.

## **THE ANTIDUMPING PROVISIONS**

The United States was on the defensive in the antidumping negotiations, since it was the goal of many of America's GATT trading partners to limit U.S. antidumping law. We understand that, and we applaud the Administration for its forceful and largely successful efforts to defend current U.S. practice and for achieving an agreement that obliges all GATT countries to adhere to important disciplines in their antidumping proceedings, including due process and transparency.

Nevertheless, the NAM is concerned that some of the protections of current U.S. antidumping law may have been eroded by the Uruguay Round agreement. At the same time, we appreciate that the Administration recognized, and the agreement begins to address, our growing concern with the improper use of antidumping procedures by foreign governments that U.S. exporters face in a global market.

## **THE SUBSIDIES PROVISIONS**

The Uruguay Round Subsidies Agreement has produced a profoundly new arrangement, one with both new opportunities and new risks for American manufacturers. Because of this

agreement, particularly the language on serious prejudice, American exporters can now realistically expect the GATT system to protect them from unfairly subsidized competition in their export markets. The NAM supports this potentially significant improvement.

On the other hand, the wholly new provisions for special, safe harbor subsidies pose new risks for American manufacturers. The NAM is concerned that:

- i) The safe harbor provision for research and pre-competitive development may enable foreign governments to fund activities that, as a practical matter, will only be funded by private investment in the United States.

Even so we recognize that we are likely to see more, not less, business-government cooperation in the United States in the future than we have seen in the past. By this I mean cooperation that has the goal of advancing U.S. commercial interests rather than security or other non-commercial objectives. The Administration's new partnership with the major U.S. automobile producers to develop technologies for new generation vehicles is only one example of this change. It would be a mistake, therefore, to suggest that this safe harbor language might not have some direct benefit to American companies working with the U.S. Government as well as to foreign firms working with their governments.

- ii) The safe harbor provision for regional assistance is inadequately circumscribed. There is a real danger that it will be used as a means to funnel assistance to firms under the guise of helping regions.
- iii) As it stands today, the environmental adaptation subsidy provision will have the effect of making certain manufacturing activities less expensive and thus more competitive abroad than they are here in the United States.

#### **FIXING THE ENVIRONMENTAL SUBSIDIES PROBLEM**

The problems for American industry that will be created by the environmental provisions of the Subsidies Agreement could be largely overcome by a modification to U.S. law that ensured that American firms too will benefit from the assistance in the purchase of environmental equipment that is allowed by this provision. The NAM supports this kind of change in U.S. law, either as part of the Uruguay Round implementation package or in supplemental legislation.

#### **GOVERNMENT PROCUREMENT**

Recognizing that negotiations on government procurement will continue until April 15, 1994, we cannot comment definitively on these particular negotiations. We are encouraged by the progress to date. We are pleased that the Republic of Korea has decided to accede to the Agreement on Government Procurement, and we are in accord with the negotiating objectives of the U.S. Government in this area.

#### **AGREEMENT ON TRADE RELATED INVESTMENT**

The NAM believes that international trade and international investment are, in many instances, inseparable components of international commerce. Our support for, first, the U.S.-Canada Free Trade Agreement and, later, the North America Free Trade Agreement derived in part from the fact that those agreements linked trade rules and investment rules in unified understandings. The General Agreement on Tariffs and Trade will be strengthened greatly by the addition of an investment chapter. The agreement's prohibitions against the government-mandated local content, trade balancing, and foreign exchange balancing requirements are especially welcome.

The NAM regrets, however, that this chapter is as limited as it is, and we are concerned by the number of trade distorting performance requirements and other market skewing government policies that would still be permitted under the Agreement on Trade Related Investment Measures.

#### **ENVIRONMENTAL PROVISIONS**

The NAM recognizes that the GATT Contracting Parties expressed a commitment to sustainable development in the agreement establishing the World Trade Organization. We

understand this to mean a commitment to continued economic progress in an environmentally responsible manner. On the basis of that understanding, we support this aspect of the Uruguay Round. We look forward to working with the Administration in their efforts to create a Trade and Environment Committee within the GATT.

We would like to remind everyone involved in the trade and environment dialogue, though, that manufacturing is, in essence, the process of changing raw materials into the useful products of civilization. As the principal advocate for manufacturing in the United States, the NAM could not support any agreement that did not recognize the basic character of this process. Nor could we accept any definition of sustainable development that did not assume that this is a valuable, indeed indispensable process.

We share with the U.S. environmental community the desire for transparency and openness in all legal processes. It is our strong view, however, that on issues affecting commerce and the environment, the most important private sector advisers for national governments and international institutions are the businesses involved in the commerce at issue and their private sector representatives. We urge the U.S. Government and the World Trade Organization to consult closely with business interests on all such issues.

#### **THE BUDGETARY IMPLICATIONS OF THE URUGUAY ROUND**

The NAM is mindful of the fact that the Budget Enforcement Act of 1990 requires Congress to offset revenue losing measures with adjustments elsewhere in the budget. We urge the Congress to ensure that this principle is applied realistically in the context of legislation to implement the Uruguay Round. I would point out that reductions in high, prohibitive tariffs may so increase trade in particular products as to increase the tariff revenue derived from that trade. I would also point out that the anticipated U.S. growth associated with the Uruguay Round's new export opportunities is likely to generate increased taxes. On behalf of the NAM, I urge the Congress, and specifically the Congressional Budget Office, to use a dynamic model, rather than a static one, in assessing the budgetary effects of the Uruguay Round.

It would be tragic if budgetary considerations were allowed to impede Congressional approval of legislation implementing the Uruguay Round. I suggest that the use of a dynamic model for estimating the budgetary effects of the Uruguay Round may be a necessary first step toward ensuring that this does not occur.

#### **FUTURE NEGOTIATING AUTHORITY AND A CLEAN BILL**

The President's authority to negotiate new bilateral, plurilateral and/or multilateral trade agreements, pursuant to "fast-track" procedures, has now expired. We believe that the Uruguay Round and the North American Free Trade Agreement have clearly demonstrated the potential benefits of such authority. We think this authority should be renewed, with appropriate objectives, at the earliest practical opportunity.

A discussion of new negotiation authority raises the question of "a clean bill." In other words, should Congress use the legislative opportunity of the Uruguay Round implementing bill to address a broad range of international trade issues? Or should you limit the content of the bill's provisions to those that do no more than implement the Uruguay Round?

In our view, the U.S. Government's primary goal should be passage of an implementing bill this year, preferably before the August recess. If in your judgment, Mr. Chairman, and that of the other leaders in this area the inclusion of non-Uruguay Round provisions would not compromise the hope of early enactment of such a bill, we would certainly have no objection to a broader bill.

Indeed, there are things that we ourselves would like to see done beyond strict implementation. I have already mentioned two, namely, new negotiating authority, which we believe is very much needed, and assistance to facing new environmental requirements. **The Jackson-Vanik Amendment.** Another important goal of the NAM is to see the repeal of the Jackson-Vanik Amendment. We believe it is an anachronism that has become an impediment to American trade and to other American objectives. We think the time has come to take it off the books. We would be delighted to see its repeal included in the Uruguay Round implementing bill.



On the other hand, we would not advocate holding up passage of the Uruguay Round bill for the sake of Jackson-Vanik repeal or any other contentious initiative that might be associated with the Uruguay Round implementing bill.

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#### CONCLUSION

There are some important exceptions, but for the most part the Uruguay Round negotiations are over. The choice for Congress and the country is between participating in a GATT that has been reinvigorated and somewhat redefined by the Uruguay Round or rejecting the Uruguay Round in favor of less structured and more uncertain arrangements with our GATT trading partners.

We urge you, our government, to adopt and implement the Uruguay Round as soon as possible, while at the same time pursuing every available opportunity for correcting its deficiencies and enhancing its value to American industry.

Thank you.

Chairman GIBBONS. Thank you, sir.  
Mr. Mossinghoff.

**STATEMENT OF GERALD J. MOSSINGHOFF, PRESIDENT,  
PHARMACEUTICAL MANUFACTURERS ASSOCIATION**

Mr. MOSSINGHOFF. Thank you, Mr. Chairman.

Mr. Chairman, my name is Gerald Mossinghoff, president of the Pharmaceutical Manufacturers Association. PMA represents more than 100 research-based pharmaceutical companies, including 40 major biotechnology startup companies in the United States.

In addition to the overall scheme of the Uruguay round, we have particular interest in two provisions: One was the intellectual property protection provisions in GATT, the so-called TRIPs; and the second was the zero-for-zero tariff provision having to do with pharmaceuticals.

PMA commends the government negotiators, especially Ambassador Mickey Kantor and his staff, for bringing the Uruguay round to a conclusion. PMA's board of directors supports the implementation of the GATT-Uruguay round on the understanding that the United States will vigorously pursue other efforts to improve intellectual property protection in patent infringing countries during the unduly long and discriminatory implementation period for pharmaceutical patent protection contained in the TRIPs negotiation.

Mr. Chairman, in that vein, this week is a very important one, because by next Monday the administration must decide what it is going to do with respect to a 301 action pending against Brazil for engaging in pharmaceutical patent piracy. They are the world's leaders in pharmaceutical patent piracy. We are working with USTR and are very anxious to see what their decision is going to be. I think it has to be announced by next Monday.

PMA member companies have an extraordinary commitment to research and development. According to the Office of Technology and Assessment, it costs \$359 million, and that is in 1990 dollars, and takes about 12 years to bring a drug from laboratory to clinical trials and into approval and then into the marketplace—\$359 million.

Unlike many other industries in the United States, the research-based pharmaceutical industry continues its increase in investment in research and development. Our research and development investment has doubled every 5 years since 1970, and this year will almost reach \$14 billion, about 30 percent more than that spent by all the institutes of the National Institutes of Health on research and development.

The benefits of the R&D are clear. The U.S. industry is the world leader in developing new medicines. We are responsible for about one-half of all new drugs that have reached the market since 1970. Private industry was the source of more than 92 percent of new chemical entities approved during the 1981–90 timeframe. And of the 100 most prescribed patented drugs in the United States last year, 99 percent were patented by private industry. That is invented and patented by private industry. We are the source worldwide of most new drugs coming into the health care systems of the world.

Mr. Chairman, the TRIPs agreement in GATT has many positive features. It is the first worldwide agreement protecting pharmaceutical patents. The substantive provisions of TRIPs, when they take effect, will provide key benefits to the international research-based pharmaceutical industry.

For example, the TRIPs text provides for 20-year patent protection for pharmaceuticals, strict limitations on compulsory licensing of patented technology, including an all important prohibition against compulsory licensing regimes that discriminate based on fields of technology.

It provides that importation of products is appropriate to satisfy local patent working requirements, and there are strict enforcements of intellectual properties rights, including special border measures to prevent the importation of infringing products.

All of that is to the good and all has been striven for for years on a bipartisan basis by the U.S. Government. However, because TRIPs allows for a 10-year delay for patent protection in developing countries and does not cover products in the pipeline, it will not significantly benefit the international research-based pharmaceutical industry in the many rapidly growing markets of Asia, Africa and Latin America until the year 2005.

We think that is too long, Mr. Chairman, and we do have an understanding, we think this committee can help reinforce that understanding, that during that unduly long transition period that we continue to take strong bilateral actions. I agree with Mr. Lewis that 301 is alive and should be used as a way to put bilateral pressure on companies that continue to ignore our patents and continue to engage in patent piracy.

Mr. Chairman, thank you very much for this opportunity to appear before your subcommittee.

[The prepared statement follows:]



# Statement

**Pharmaceutical  
Manufacturers  
Association**

GERALD J. MOSSINGHOFF  
PRESIDENT

PHARMACEUTICAL MANUFACTURERS ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON TRADE  
COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1994

Mr. Chairman and Members of the Subcommittee:

I am Gerald J. Mossinghoff, President of the Pharmaceutical Manufacturers Association. PMA represents more than 100 research-based companies – including more than 40 of the country's leading biotechnology companies – that research, develop and produce most of the prescription medicines used in the United States and a substantial portion of those used abroad. I appreciate the opportunity to appear today at this important hearing on the GATT Uruguay Round trade agreements.

Our companies have worked closely with the U.S. Government negotiators and the Congress over the past seven years since the Uruguay Round began in 1986. During that period, we identified two key areas in which the research-based pharmaceutical industry has a particular and strong interest. These are the enhanced standards for intellectual property protection – including pharmaceutical patents – in TRIPS, and the elimination of import duties on pharmaceuticals in the so-called "zero-for-zero" tariff agreement.

We have also worked with the U.S. negotiators on an issue regarding the prohibition of certain types of government assistance for research and development. The pharmaceutical industry works closely with, and supports, U.S. Government agencies involved in basic research. While we recognize that there is a potential for abuse by foreign industries of such industry-government partnership, we support the Uruguay Round agreement on subsidies. We also recognize that the implementation of the new subsidies provisions bears careful monitoring by the Congress and Executive Branch.

PMA commends the U.S. Government negotiators, especially Ambassador Mickey Kantor and his staff at the Office of the U.S. Trade Representative, for their efforts to bring the Uruguay Round to conclusion after seven years of difficult negotiations. PMA also appreciates the decade-long bipartisan support, in both the Congress and the Executive Branch, in helping to ensure worldwide respect for intellectual property, including patents.

PMA supports U.S. implementation of the GATT Uruguay Round agreement on the understanding that the United States will vigorously pursue other efforts to improve intellectual property protection in patent-infringing countries during the unduly long and discriminatory implementation period for pharmaceutical patent protection contained in the TRIPs text.

Mr. Chairman, you and the members of this Subcommittee have been strong leaders in the battle against intellectual property piracy, and we look forward to working closely with you during the next several months as the Congress and the Administration prepare legislation to implement the results of the Uruguay Round.

### THE IMPORTANCE OF INTELLECTUAL PROPERTY PROTECTION

Before turning to the specifics of our analysis of the Uruguay Round agreement, I would like to review briefly the reasons why strong and effective intellectual property protection is vital to the research-based pharmaceutical industry. In particular, this background is key to an appreciation of why the 10 year delay in implementation and lack of pipeline protection in TRIPs will have a negative impact on the research-based pharmaceutical industry.

PMA member companies have an extraordinary commitment to research and development. According to the Office of Technology Assessment, it now costs an average of \$359 million dollars (in 1990 dollars) and takes 10 to 12 years to bring one new pharmaceutical to the market. Only one in 5,000 compounds tested in the laboratory is ultimately approved for human use.

Unlike many other U.S. industries, the research-based pharmaceutical industry continues to increase its investment in research and development. The industry has doubled its R&D expenditures every five years since 1970 and, for several years, has been spending substantially more than the entire Federal Government spends on all biomedical research, as shown in Figure 1, below.

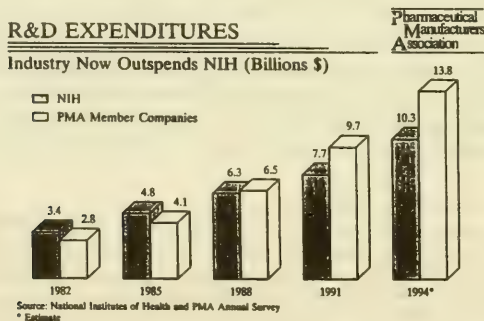


Figure 1.

This year, the industry will spend an estimated \$13.8 billion on R&D, up from \$12.6 billion in 1993. The ratio of R&D spending to sales will be about 18.8 percent in 1994. This is more than four times the average rate for all U.S. industries engaged in R&D. It is also true, however, that the rate of increase in R&D spending is dropping as a number of health care cost containment issues are affecting the industry. Certainly, continued patent piracy by major countries will not improve the chances for greater R&D investment.

The benefits of this R&D are clear. The U.S. industry is the world leader in developing new medicines. We are responsible for about one-half of all new patented drugs that have reached the global market since 1970. Private industry was the source of more than 92 percent of the new chemical entities approved in the U.S. during 1981-1990. And of the 100 most prescribed patented drugs in the United States in 1992, 99 percent were patented by private industry, shown in Figure 2, below.

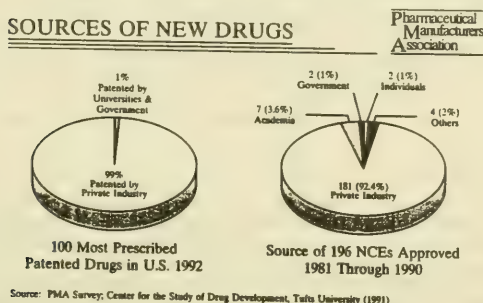


Figure 2.

The U.S. pharmaceutical industry consistently registers trade surpluses year after year – one of the few high technology-manufacturing industries that does so.

Just as medicines have conquered diseases of the past, including tuberculosis, polio, syphilis and diphtheria, the industry's new therapies will succeed in combatting the diseases of the present if the incentives for pharmaceutical innovation, including elimination of global patent piracy, are preserved.

Pharmaceutical breakthroughs, including those from biotechnology, provide the best hope that new cures and treatments will be developed. The rise of biotechnology follows earlier scientific advances that also led to better understanding of disease and ultimately more effective medicines. Products now in the pipeline could provide more cures and better controls for many of today's most intractable and costly diseases.

For example, the industry has almost 300 medicines in human clinical trials or awaiting approval at the FDA for just eight diseases that afflict older Americans. These



eight diseases alone – osteoporosis, diabetes, stroke, depression, arthritis, Alzheimer's, cancer and cardiovascular disease – cost the United States more than \$430 billion a year, as shown in Figure 3, below.

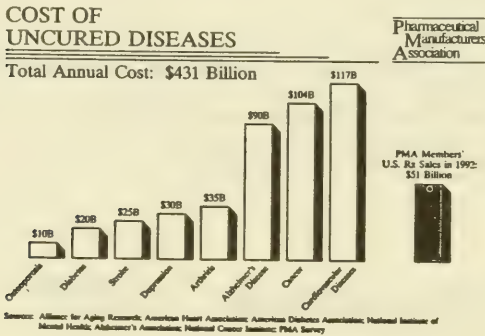


Figure 3.

It is a paradox of the industry that while research into new medicines is so costly, many medicines can be copied at a small fraction of their development cost. We are, therefore, understandably concerned about the 10 years of delay granted to developing countries before they must implement TRIPs and the lack of pipeline protection. Taken together, these mean that the GATT will not yield adequate and effective protection of pharmaceutical patents in many countries for more than a decade. These countries include Argentina, Brazil, India and Turkey.

#### INTELLECTUAL PROPERTY PROTECTION IN TRIPs

The TRIPs agreement has many positive features. It is the first worldwide agreement protecting pharmaceutical patents. The substantive provisions of TRIPs – when they take effect – will provide several key benefits to the international research-based pharmaceutical industry by providing for solid pharmaceutical product patent protection in all GATT member states. By protecting pharmaceutical patents, TRIPs will in turn foster investment into innovative new treatments, therapies and cures for many illnesses and diseases and improve the health of patients around the world.

The TRIPs text provides for:

- Twenty-year patent protection for pharmaceuticals;
- Strict limitations on compulsory licensing of patented technology, including a prohibition on compulsory licensing regimes that discriminate against specific fields of technology;
- Importation of products in order to satisfy local patent working requirements; and
- Strict enforcement of intellectual property rights, including special border measures to prevent the importation of infringing imports.

On this last point I would note that American trade law – Section 337 – already provides for such measures. To the extent any changes to our border enforcement measures are necessary, the vitality and effectiveness of Section 337 should be maintained .

In summary, the TRIPs text is a substantial step forward as a multilateral trade agreement. However, the world has changed considerably since the Uruguay Round negotiations began in 1986. There has been a growing recognition of the importance of intellectual property protection to high-technology manufacturing industries such as the pharmaceutical, and its related biotechnology, industry. Tens of thousands of high-technology pharmaceutical jobs depend on strong worldwide intellectual property protection. Bilateral intellectual property agreements, as well as NAFTA, have been negotiated with many countries from Eastern Europe to Latin America to China that represent significant advances over the TRIPs text in several areas, most notably in the timing of the application of new intellectual property protection.

Because TRIPs allows for a 10 year delay in patent protection and does not cover products in the pipeline, it will not significantly benefit the international research-based pharmaceutical industry in many rapidly growing markets in Asia, Africa and Latin America until at least 2005. I would also note that the ten year delayed implementation period in TRIPs includes an extra five years of delay which discriminates against pharmaceuticals. For most areas of technology, developing countries have five years in which to conform to the TRIPs obligations. However, to the extent that countries do not protect pharmaceutical product patents, they have an extra five years to conform to TRIPs. It is regrettable that the United States agreed to a result which discriminates against one of its most competitive high-technology manufacturing industries.

Another key area in which the TRIPs agreement does not offer adequate intellectual property protection is in the vital biotechnology field. TRIPs Article 27.3 would allow GATT signatories to exclude from patentability plant and animal varieties other than microorganisms, an exclusion which could have significant adverse effects on biotechnology-derived products.

Biotechnology is another area where the U.S. industry is the world leader. Of the 178 biotechnology patents for pharmaceuticals/healthcare products granted in 1992, 140 went to Americans and 43 of those went to PMA member companies, as shown in Figure 4, below.

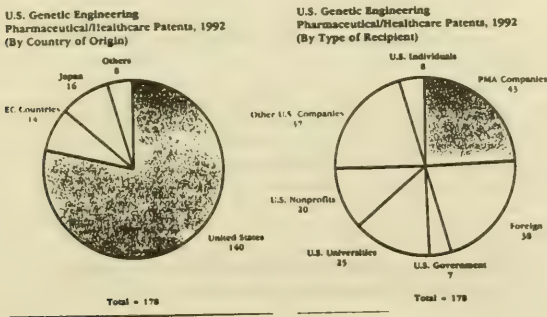


Figure 4.

## U.S. TRADE POLICY AND INTELLECTUAL PROPERTY PROTECTION

These flaws in TRIPs stand in marked contrast to the progress toward better intellectual property protection for pharmaceuticals achieved by U.S. negotiators in NAFTA and in many bilateral negotiations conducted under the authority of the Section 301 provisions of U.S. trade law. All of these agreements take effect much sooner than does the TRIPs text for developing countries. PMA believes strongly that, given the undue, costly and counterproductive delay in effective application of the TRIPs text, the United States should accelerate rather than slacken its bilateral efforts.

Since the enactment of the Trade and Tariff Act of 1984, intellectual property infringement has been defined as an unfair trade practice. Both the Congress and the Executive Branch have supported vigorous enforcement of Section 301 to enforce intellectual property rights abroad. It is largely as a result of this consistent U.S. policy that intellectual property rights are included – for the first time – in a GATT agreement. PMA looks forward to the opportunity to work closely with the Administration and the Congress on Uruguay Round implementing legislation to ensure that the United States retains the ability to enforce intellectual property rights during the delayed implementation period. Expanded use of Section 301, or other means, are appropriate measures to consider in the context of Uruguay Round legislation.

As the report language and the floor debate of the 1988 Omnibus Trade and Competitiveness Act show, a commitment to improving intellectual property protection, including strong patent protection for pharmaceuticals, by U.S. trading partners has been a concern of the Congress and the Executive Branch. Congress has mandated in both the 1984 and 1988 Trade Acts that the U.S. Government pursue intellectual property protection as a trade priority. For example:

"The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of semiconductors and other electronic products, motion pictures, books, chemicals, computer software, records, and pharmaceuticals. . . . Intellectual property protection and market access problems in foreign markets are often closely intertwined. . . ."

Source: Report of the House Committee on Ways and Means to accompany H.R. 3, the Trade and International Economic Policy Reform Act of 1987, Report No. 100-40, at page 163.

"America's economic edge is its technology and its innovation. But, if we are to enjoy the fruits of our labor – the jobs and growth that are to come from innovation – we need to stop the piracy of American intellectual property. . . . It takes as much as \$150 million [N.B., most recent estimates are as high as \$359 million] if not more to develop and bring a new pharmaceutical product to market. Yet, an average chemist could duplicate it with ease. . . ."

Source: Senator Frank Lautenberg, D-N.J., during debate on H.R. 4848, Congressional Record, page S-10711.

The willingness of both the Executive Branch and Congress to make patent protection for pharmaceuticals a priority underlines the importance of this industry to the nation's economy. Use of Section 301 of U.S. trade law has been successful in achieving numerous bilateral intellectual property agreements with foreign countries. Importantly, improvements in intellectual property protection around the world have come not only as



a result of U.S. pressure from 301 actions, but because countries understand that intellectual property protection promote their economic interests. The importance of effective patent protection to pharmaceutical innovation is indeed recognized internationally.

There are numerous examples of how U.S. Government intervention, combined with a desire by foreign governments to improve their prospects for economic development, has resulted in the institution of pharmaceutical patent protection. In the Asia-Pacific region, China, Taiwan, Korea and the Philippines have all ceased pharmaceutical piracy as a result of 301 actions. In Latin America, Mexico's 1991 patent law was the result of that country's economic reform program as well as consultation with the United States. Mexico's new law, in turn, helped pave the way for the historic NAFTA accord. Also, in 1993 Ecuador concluded a bilateral intellectual property agreement with the United States greatly enhancing pharmaceutical patent protection. In Europe, Hungary, which had been a notorious patent pirate, changed its patent law in 1993.

In the post-Uruguay Round environment, the 301 law will continue to figure prominently as the current trade dispute with Japan shows. There are two current 301 investigations regarding pharmaceutical patent infringement in Argentina and Brazil on which decisions are due shortly. We believe that the decisions taken by USTR in response to the consistent refusal by both countries to honor their commitments to the U.S. Government to implement pharmaceutical patent protection represent crucial test cases of U.S. foreign trade policy. Despite repeated promises the Argentine Government has not taken any steps to protect pharmaceutical patents. Brazil is not only attempting to exploit the delayed implementation period extended by TRIPs, but also to backtrack on certain key aspects of TRIPs, such as the granting of patents for imported products. In both cases, PMA believes that decisive action must be taken by the USTR as proof of the U.S. Government's commitment to address such unfair trade practices in the wake of the Uruguay Round settlement.

In addition to the necessity of finding ways to maintain or even enhance the effectiveness of Section and Special 301 during the 10 year delay in implementation period, there are other trade and non-trade related mechanisms the United States should explore in pursuit of its trade policy objectives.

As the Congress considers Uruguay Round implementing legislation, PMA believes the following should be considered:

- o Renewal of GSP legislation provides an opportunity to win better enforcement of intellectual property rights. Mr. Chairman, your subcommittee has requested comments on GSP reauthorization and we believe that GSP benefits should be linked more forcefully to adequate and effective enforcement of intellectual property rights, including pharmaceutical patents. Virtually all the major patent-pirating countries, including Argentina, Brazil, India and Turkey, are GSP beneficiaries. They should not receive any GSP benefits while they misappropriate the intellectual property of U.S. inventors.
- o Accession to NAFTA by South and Central American countries must be predicated on their establishment of at least TRIPs-style patent protection, including full pipeline protection for pharmaceuticals, before the U.S. enters into accession talks with petitioning countries.

We also suggest, and would be pleased to work closely with this Subcommittee and its counterpart in the Senate, on a renewed, post-Uruguay Round, program involving all appropriate agencies of the U.S. Government in the effort to improve intellectual property protection. For example, U.S. foreign assistance programs, including U.S. approval of multilateral agency assistance, should be considered in view of the recipient country's protection of intellectual property. U.S. agencies, such as the Food

and Drug Administration, which provide technical and scientific assistance should be encouraged to provide the type of assistance that will support adequate intellectual property protection. For example, countries which implement and enforce patent protection should receive greater access to U.S. training programs, while those who do not should be denied such benefits.

### COSTS OF PATENT PIRACY

According to the International Trade Commission, patent piracy by developing countries costs the international pharmaceutical industry as much as \$5 billion annually. But patent piracy not only affects the ability of the industry to support the costly innovation necessary to discover new medicines, there is compelling evidence that piracy also endangers public health in developing countries. In January 1992, the British journal *Nature* reported that much of the trade in counterfeit drugs – which is reaching epidemic proportions in places such as Brazil and Nigeria – originates "from developing countries that do not recognize the patents owned by multinational drug companies." In one recent case, reports *Nature*, more than 100 Nigerian children aged under six years old died after being given acetaminophen containing an industrial solvent. Similar cases have recently been reported in India and Bangladesh.

The United States must not stand by and allow patent piracy to flourish for another decade. While the Uruguay Round concluded without solving this particular problem, its implementation through U.S. legislation creates a corresponding opportunity.

### PHARMACEUTICAL TARIFF ELIMINATION

In another area, the agreement among many major countries to eliminate import duties on trade in pharmaceuticals is a major achievement. The elimination of tariffs will promote expanded pharmaceutical trade. PMA worked closely with U.S. and other government negotiators on this aspect of the market access agreement and looks forward to its taking effect in July 1995.

### CONCLUSION

Developments around the world in the past few years have shown that increasing numbers of countries recognize the importance of intellectual property protection to their economic development. Similarly, the U.S. Government and this Subcommittee have long understood the vital role of innovative, high-technology industries such as pharmaceuticals to U.S. economic health.

Patent pirates abroad are resisting this trend in order to protect entrenched domestic interests which thrive on appropriating others' patented technology. Section and Special 301 have been successful in stopping or at least reducing such theft in a number of countries. When it takes effect, the GATT TRIPs accord will provide the legal basis for stopping such theft. In the wake of the Uruguay Round agreement, we must, together, keep up the fight on all fronts and use every available means afforded by U.S. international economic diplomacy to eliminate patent piracy.

In conclusion, industry continues to rely on the strong support both of the Administration and Congress in order to achieve the objective of effective intellectual property protection abroad. I am here in particular to emphasize the help we need in ongoing activities. At this moment, countries such as Argentina, Brazil, and Turkey are engaged in legislative consideration of patent law reforms. Mr. Chairman, we need the help of this Subcommittee as well as Ambassador Kantor to see that these and other countries do what is right.

Mr. Chairman, that concludes my prepared statement. I will be pleased to respond to any questions that you or other Members of the Subcommittee may have.

Chairman GIBBONS. Thank you, Mr. Lewis and Mr. Mossinghoff.

I have listened closely to what you have had to say and you have taught me some things about this agreement that I did not understand before. So without expressing any further ignorance, I will turn it over to Mr. Thomas here.

Mr. THOMAS. Thank you, Mr. Lewis and Mr. Mossinghoff, for your testimony.

Mr. Mossinghoff, on page 5 of your testimony you say fairly declaratorily that the intellectual property rights, article 27.3, TRIPs article 27.3, would allow GATT signatories to exclude from patentability plant and animal varieties other than microorganisms, an exclusion which could have significant adverse effects on biotechnology derived products.

I agree with you completely if that is the case. My problem is when I read 27.3, to me it is somewhat ambiguous. Clearly, three starts off, "members may also exclude from patentability"; and then, B, "plants and animals other than microorganisms, and essentially biological processes for the production of plants and animals other than nonbiological and macrobiological processes."

Then it says, however, "members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof, in terms of the specificity and exclusivity."

So I need to know how you came to the conclusion that you could make an absolute statement about the unpatentability so that I can appreciate your thinking and then have you discuss it with USTR and where they are from your understanding. Because this is of great concern to me. If we can read this section unambiguously, I think it is like a lot of the language, to me there is a degree of ambiguity, and I would like to know why you do not believe there is.

Mr. MOSSINGHOFF. Well, Congressman, we believe the provision that you read really has to do with plant varieties. In the United States we have a system of protections of plant varieties where sexually produced plants are covered by the Department of Agriculture and asexually produced plant varieties are covered by the U.S. Patent Office under plant patents.

Mr. THOMAS. For years I have been fighting for the ability to really elevate plants to some kind of general patentability, and especially as we move into the genetic manipulation of plants. To me, that is an area in which we have a great potential for value added for unique products.

You are telling me your reading of this section indicates we did not get agreement in GATT for the clear patentability of either asexually or sexually reproduced plants.

Mr. MOSSINGHOFF. I think the countries are obligated to protect plants, but they are really not in our view required to protect the products of biotechnology, the great inventions that are coming out of our U.S. biotechnology industry. We think that is unfortunate. We think there is self-serving reasons why countries should want to do that.

We have the best patent protection for biotechnology in the world, and of the patents issued last year, more than three-fourths



of them were U.S. origin patents, followed second by Japan, and third by all the countries of the European Community.

We think that is an area where the government should work to get patent protection. And it should be evident from the countries involved that it is a self-serving thing to do, to provide patent protection for our biotechnology engineered compounds, proteins and also animals, such as the Harvard mouse, transgenic mouse.

Mr. THOMAS. Have you discussed this with USTR, and what were your conclusions about their analysis of this section?

Mr. MOSSINGHOFF. I believe their analysis agrees with ours, but I would like to confirm that and provide it to the committee for the record. But I believe they are also firmly convinced, as we are, there should be strong patent protection internationally for biotechnology products.

Mr. THOMAS. I think there certainly should be because of commerce, but there is an additional concern I have, and that is the political football that this issue apparently is for a number of groups, and to the degree that we recognize its societal usefulness as well as commercial value through international agreements. I think it takes some of the wind out of the sails of those folks who want to be pernicious in the political display of the issues.

So I am very much concerned and look forward to, one, USTR's exact analysis so that we have a complete understanding of where we are on this issue, and then anything that we can do to move forward, because, to me, this is a failure in our ability to bring to a successful conclusion, as we have in other areas, an area that clearly is going to be a future growth area.

Mr. MOSSINGHOFF. Congressman, I do not know if I would agree it is a failure; it is certainly a work in progress, is the way I would characterize it. I met last week with the director general of the China patent office—

Mr. THOMAS. The snapshot currently is one of nonsuccess. I look forward to the movie in its conclusion.

Mr. MOSSINGHOFF. There is increasingly an international appreciation. In Japan, for example, MITI has targeted biotechnology as an area they want to emphasize in their industry's movements. They are actually, in fact, challenging our industry to keep our enormous lead at this point. And I think there is a lot of work to be done and we have not succeeded yet through GATT, certainly.

Mr. THOMAS. I appreciate your bringing up the point. And the pharmaceutical industry, I think, is, by analogy, one of the ones who should focus on this, because the fruits of your labor, if they are protected, will bear more fruits, and if they are not, they will not.

Mr. MOSSINGHOFF. That is right. Thank you.

Chairman GIBBONS. Thank you, gentlemen. Appreciate it.

Let's go to Mr. Boutwell, Mr. Watts, Mr. Schwensen and Mr. Blackburn, the National Council of Farmer Cooperatives, the Rice Millers Association, the National Association of Wheat Growers, and the Meat Importers Council of America.

Let's start with Mr. Boutwell.

**STATEMENT OF WAYNE A. BOUTWELL, PRESIDENT, NATIONAL COUNCIL OF FARMER COOPERATIVES**

Mr. BOUTWELL. Thank you very much, Mr. Chairman.

My name is Wayne Boutwell, president of the National Council of Farmer Cooperatives. I do have a full copy of my text I want to put in the record.

Chairman GIBBONS. All statements will go in the record in full today.

Mr. BOUTWELL. Thank you very much, Mr. Chairman.

Since the mid-1980s, U.S. agriculture has found itself in a very difficult situation with declining internal support, primarily because of the budget impacts of our own internal budgets, while at the same time we faced continued export subsidies on the part of many of our competitors overseas. This has had the effect of driving down world prices at the same time, as traditional farm programs have been reduced. As a result, U.S. agriculture has found itself in a very, very difficult situation.

It became increasingly clear to us that the future economic viability of U.S. agriculture was dependent upon growth in the export markets. We knew this would not be an easy task, because no other sector in the world has a more complex set of internal and external policies and programs than does the agricultural and food sector, primarily because every country around the world maintains a food and agricultural policy of its own to make sure that the food needs of its citizens are met.

As a result, when you take a look at U.S. trade we estimate that about 60 percent of the trade volume that the United States sends out into the world marketplace faces some form of either export subsidies or barriers to trade.

While the goal of the Uruguay round was to eliminate trade distortions, very frankly we viewed that, because of these complexities, that was going to be difficult to achieve. Therefore, we believe that the correct way to evaluate this agreement is to do so by comparing it to the existing trade rules rather than what we hope to achieve out of this agreement. The National Council of Farmer Cooperatives believes the agreement does improve the trade environment and the trade system for U.S. agriculture.

Several items of note: One is it reduces both the quantity and the value of export subsidies. That should result, over time, in improvement of world prices as well as opening up more products that are bought and sold on a competitive basis.

It converts all nontariff barriers to tariffs, and reduces them, which means it should start to open up some markets around the world. But the other benefit we see is that, when the next round occurs, we will be able to evaluate barriers on an equivalent basis, by being able to compare tariffs to tariffs. So we think there are some real benefits down the road on the basis of this agreement.

It also establishes for the first time what are acceptable policies around the world in terms of what governments can include in their own internal programs, including the so-called green box policies and those that have to be disciplined. We think that is a step in the right direction.

And finally, it sets up standards for sanitary and phytosanitary restrictions to trade that will have to be done on a scientific basis that we think is very important as well.

The ultimate success of this round, however, will depend upon three things, we believe. First, the agreement does not eliminate trade distortions. U.S. agriculture will continue to need a partnership with the U.S. Government in the area of helping to continue to open up markets that may remain closed or reduced under this agreement, as well as to counter any remaining unfair trade practices that may be left in place. Therefore, we would urge full utilization of programs like the Export Enhancement Program and others that are designed to offset those kind of practices.

Second, the agreement puts certain programs, like research and market promotion, in the so-called green box. We know we are going to be facing increased funding from other countries around the world in those areas. This is a multilateral agreement. It does not guarantee the United States any markets out there, it simply gives us the opportunity to gain those markets, and we would urge a full support of the programs to help U.S. agriculture in partnership to gain market access.

And, third, it provides the opportunity for import sensitive commodities, including section 22 commodities, for some safeguard provisions during the transition. We would hope that those would be fully utilized.

With the understanding that the agreement does improve trade, that our government will maintain the partnership to help address continued unfair trade practices and help develop markets, the National Council of Farmer Cooperatives supports the agreement and the passage of the implementing legislation.

[The prepared statement follows:]



**Statement by Wayne A. Boutwell  
National Council of Farmer Cooperatives  
Before  
House Ways and Means Committee  
Trade Subcommittee  
Tuesday, February 22, 1994**

Thank you, Mr. Chairman. My name is Wayne Boutwell and I serve as President of the National Council of Farmer Cooperatives on whose behalf I appear today.

The National Council of Farmer Cooperatives is a nationwide association whose members include over 100 regional marketing and supply cooperatives, the banks of the cooperative Farm Credit System, and 31 State Councils. Our members, in turn, represent over 4,000 local cooperatives with a combined membership of nearly 2 million individual farmers.

These farmer-owned businesses handle, process, and market virtually every agricultural commodity grown in the U.S., manufacture or provide seed, feed fertilizer, fuel and other production inputs; help finance both producers and their cooperatives, as well as engage in international lending necessary to promote U.S. agricultural exports.

It is from this perspective that we appreciate very much the opportunity to share our views with regard to the Uruguay Round GATT agreement and its implications for U.S. agriculture and rural America.

**The National Council of Farmer Cooperatives supports implementing legislation for the Uruguay Round with provisions to address concerns expressed by our members with selected provisions. Agriculture perhaps more than any other sector of the U.S. economy, understands that its growth potential lies in the global marketplace. As that marketplace becomes less restrictive, the comparative advantage of the U.S. food and agriculture system will reach its full potential. However, from the standpoint of policy it is crucial that U.S. trade policies stay in step with the evolving marketplace and neither significantly lag nor significantly outpace the market evolution under GATT.**

The Uruguay Round of GATT represents an improvement in the world trade environment. While it does not achieve all of the expectations created when the Round began in 1986, it does represent a significant step toward achieving more open and fair conditions for trade in agricultural commodities. By bringing agriculture within the GATT framework and establishing specific commitments to reduce agricultural export subsidies, tariffs and non-tariff barriers and trade-distorting internal supports it represents one more step in opening markets for expanded trade. Equally important it has laid a well defined foundation for future negotiations in coming years to further lower the overall levels of trade restrictions and subsidies.

The Uruguay Round of GATT represents progress in six fundamental areas:

- 1) Agriculture for the first time will be generally under the disciplines of the GATT, although there are some exceptions such as the exemption from the general subsidies codes. The effectiveness of GATT, which under the agreement will be replaced by the World Trade Organization (WTO) is expected to be enhanced with significant modification in the dispute settlement process. Under the WTO, specific time limits and the prevention of offending parties from blocking adoption of decisions, should provide for a more effective and timely system.
- 2) It more clearly defines policies considered to be trade distorting and subject to discipline and those that are permissible.
- 3) Trade-distorting and price depressing export subsidies are disciplined by this agreement both in terms of dollars spent and quantities receiving such subsidies. By the year 2000 subsidies will be 36 percent lower by value and 21 percent lower by volume than prevailed in 1986-88. At the same time subsidies for humanitarian food assistance are permitted under GATT.

- 4) All non-tariff barriers will be converted to tariff equivalents and all tariffs will be reduced by a minimum 15 percent over the implementation period with aggregate tariff levels reduced by 36 percent. Additionally all tariffs will be bound under the agreement. Any increase or failure to comply with the reductions will require compensation to all parties impacted.
- 5) The agreement establishes a scientific, risk assessment base for establishing sanitary and phytosanitary regulations and rules. This will serve the dual purpose of protecting the health and safety of global consumers as well as preventing the use of such regulations as non-tariff barriers.
- 6) The Uruguay Round has established a clearer set of rules for the future accession to WTO of other countries such as China, Russia, and Taiwan.

While a comprehensive analysis of the agreement for agriculture has not yet been completed because some country schedules are still being evaluated, it seems clear that the agreement will enhance future agricultural trade for most commodities.

As with any agreement of this magnitude there remains unresolved questions, some of which will only be answered by actions in the years to come. Some of the more important issues for the members of the National Council include:

**1) The nature of the disciplining process for export subsidies.**

While the agreement will reduce export subsidies by the year 2000, it has the potential to increase their usage in the near term. Countries will be permitted to begin their reductions from the highest level for each commodity group which prevailed in 1986-88 or 1991-92.

How the U.S. responds to these circumstances on a commodity-by-commodity basis is critical during the transition period. To address this problem we urge the full use of available funding to carry out aggressive export programs including EEP, DEIP, MPP, GSM, PL480, and market development. In this regard, we are extremely concerned that the President's budget chose to cut these programs by nearly \$400 million.

**2) The transition for commodities that have tariffed Section 22 protections.**

While the conversion of Section 22 protections to tariff or tariff rate quotas appears to afford transition protection, these commodity markets should be monitored carefully. If these commodities are impacted disproportionately relative to other commodities under the agreement or face income reductions of such a magnitude to severely disrupt the domestic industry, transition adjustments and protection should be afforded the respective industry.

**3) Special treatment under the tariffification process.**

Some countries have chosen to seek special treatment to delay the tariffification process for selected commodities, e.g. Japan for rice. In exchange they have offered increased access over time. At the end of the implementation period, tariffification must occur unless further compensation is offered. Formal tariffification is the foundation for future negotiations and U.S. negotiators must insist upon tariffification at the end of the period.

**4) Scientific standards for sanitary and phytosanitary regulation.**

The effectiveness of these provisions will be determined by the effort and commitment of member countries. The U.S. government, and particularly the USDA, must be aggressively involved in the international organizations established to carry out these mandates. They should seek to establish uniform international standards to facilitate trade. These organizations will require significant funding and staff support from all countries and the U.S. should seek to assure these requirements.

**5) Appropriate role of government in agriculture and food policy.**

As a matter of public policy it is important to assure that the consumers of this country have available a stable supply of safe, high quality food at reasonable prices. Unfortunately farming is carried out in an unstable environment due to weather fluctuations.

Many of the traditional programs designed to bridge this gap are being reduced or eliminated

under a combination of budget pressures and this agreement. We would urge you to support efforts to assure that the needs of both farmers and consumers are met within policies deemed acceptable. Some of these will no doubt involve industry self help efforts such as marketing orders, domestic assistance for industrial use of renewable resources, and other industry/government partnerships to provide stability and assure that agriculture can be a competitive and growth industry in the future.

In summary, this agreement provides opportunities for expanded trade, it does not eliminate all trade barriers or unfair trade practices. Therefore, it is imperative that our government maintain appropriate policies and programs including the domestic and export funding that will allow agriculture to compete with the major exporting countries who will seek to maximize their market positions during the GATT transition period.

The recurring theme through most of these concerns is the willingness of the U.S. government to support the interests of U.S. agriculture. The U.S. government must demonstrate its willingness to support the interests of U.S. agriculture during the transition if the promise of greater opportunities from freer trade are to be realized. U.S. agriculture must have the assurance of U.S. government support within the prescribed limits if it is to compete effectively during and after the transition period.

Strong efforts by the U.S. government to seek uniform international standards for rules of origin or sanitary and phytosanitary issues will make the agreement more successful. The willingness of the U.S. government to fully utilize the permissible levels of export programs will ensure the appropriate market transitions for various commodities. The willingness of the U.S. government to support and pursue remedies for unfair trade practices will determine the equity in the negotiation tradeoffs. And for those import sensitive commodities which may be adversely impacted by the agreement; the willingness of the government to cushion those impacts will determine the credibility of the assurances the U.S. government provided those commodities during the negotiations.

U.S. agriculture, like other sectors of the U.S. economy, will be actively engaged in the transition in the global marketplace. A part of that process will be the transformation of domestic policies as well as trade policies. The pace and quality of that transition will be primarily determined by the ability of U.S. farm and trade policies to remain flexible enough to stay in step with market changes.

The members of the National Council of Farmer Cooperatives recognize the challenges and possibilities that exist if the global marketplace becomes more open and unfettered by unfair trade practices. They strongly supported NAFTA when it was clear that their concerns would be addressed. Hearings such as this and the debate over implementing legislation will permit further discussion of many issues including the ones I have identified. Addressing those issues in implementing legislation will be part of the transition process for U.S. agriculture and farmer cooperatives.



Chairman GIBBONS. Thank you, Mr. Boutwell.  
Mr. Watts.

**STATEMENT OF ROBERT WATTS, CHAIRMAN OF THE BOARD,  
RICE MILLERS' ASSOCIATION, AND VICE PRESIDENT,  
COMMODITY AND INTERNATIONAL AFFAIRS, RIVIANA  
FOODS, INC., HOUSTON, TEX.**

Mr. WATTS. Good morning, Mr. Chairman.

My name is Robert Watts, and I appear here this morning in my capacity as chairman of the board of directors of the Rice Millers Association. I live and work in Houston, Tex., where I am vice president for Commodity and International Affairs for Riviana Foods, Inc., a rice milling and marketing firm.

The U.S. rice industry has faced the rigors of international competition for many years and has maintained a 15 to 20 percent share of the world trade. Today, U.S. rice is sold in at least 116 countries and our industry is widely recognized for quality and reliability. Having a major stake in international trade, the U.S. rice industry believes it was important a good GATT be reached in the Uruguay round.

The United States is a competitive international rice marketer in spite of extensive government intrusion in the production and marketing sectors of our competitors, current customers, and potential customers. Unfortunately, the damaging effects of such intervention will not be completely repaired with the implementation of the Uruguay round agreement.

While the end of import bans in Japan, South Korea and, hopefully, other countries, provide a great deal of optimism for an expanded and strengthened world rice market, there are a number of trade practices among other countries, most notably the European Union, Thailand, Vietnam and others which give rise to our concern.

Although agricultural export subsidies have been disciplined by the Uruguay round agreement, they have also been legitimized by it. We have every reason to believe the EU will take every opportunity to fully capitalize on this new understanding regarding export subsidies.

Mr. Chairman, it is critical the U.S. Government act to protect the international market interests of U.S. agriculture by fully utilizing export assistance allowed in the Uruguay round agreement. We urge the use of each and every GATT legal tool to maximize exports of U.S. rice. This includes the aggressive use of the Export Enhancement Program when necessary.

Mr. Chairman, we request that EEP be made available for use in all markets where the United States faces subsidized competition from other countries, such as Vietnam and Thailand. The EEP has never been used against Thailand or Vietnam in spite of ample evidence of export subsidies and subsidized state trading.

We also favor continued congressional funding of other market development and market expansion programs such as the Market Promotion Program and the Foreign Market Development Program.

In short, Mr. Chairman, our competitors will continue to use programs that are allowed by the Uruguay round agreement. If the

United States does not do the same, we will lose past gains and future battles in important markets.

The U.S. rice industry has been a strong proactive supporter of U.S. efforts in the Uruguay round since the outset of negotiations. While the agreement does fall short of the original U.S. objectives, the industry fully supports the agricultural provisions because of the progress they will make in providing greater access to rice markets of GATT member countries.

We believe the removal of import bans and conversion of non-tariff barriers into tariff equivalents, reduction of tariffs, and the decline in subsidized exports will significantly expand and improve the global rice trading environment. We urge the U.S. Government to aggressively seek to build on the progress that has been achieved with this agreement in future negotiations. Moreover, given the likely entry of Taiwan to GATT in the near future, the U.S. rice industry expects the U.S. Government to obtain, as a condition for accession, an agreement that provides for clear and significant rice market access.

Based on the information available as of today, we find the agreement to be reasonably equitable and reciprocal. For example, although Japan was not subject to immediate tariffication and a tariff reduction schedule under the terms of the agreement, Japan offered a larger quota than required under the Dunkel formula. However, the industry has reservations over South Korea obtaining developing country status. This enabled that country to avoid the more stringent disciplines imposed on developed countries.

With regard to the European Union, their commitment to maintain its current import access levels for rice, while a positive development, falls short of meeting the Uruguay round objective of expanding market access opportunities. The industry requested a tariff rate quota system be established by the EU to establish the market access objective in the negotiation. However, the European Union rice market access provisions, including a bound tariff schedule and a bound margin of preference, could generate additional market access if implemented as the U.S. rice industry currently understands it.

Last, we are concerned that market access commitments and mechanisms for some countries have not been completed. And we believe it would be inadequate for those countries to be allowed to have binding commitments offering less access than a GATT member of comparable economic status.

In summary, we urge Congress to approve the Uruguay round agreement but require the administration to, one, fully utilize all allowed export assistance; and, two, accept nothing less than full compliance by all GATT members with terms, conditions and provisions established for their GATT determined economic status.

Thank you, Mr. Chairman, for this opportunity on behalf of the Rice Millers Association to express our concerns and hopes of the Uruguay round.

[The prepared statement follows:]

## STATEMENT OF ROBERT WATTS, CHAIRMAN RICE MILLERS' ASSOCIATION

Good Morning Mr. Chairman, my name is Robert Watts. I appear here this morning in my capacity as Chairman of the Board of Directors of the Rice Millers' Association (RMA). I live and work in Houston, Texas where I am Vice President for Commodity and International for Riviana Foods Inc., a rice milling and marketing firm.

RMA is the national trade association of the U.S. rice milling industry. Members are both farmer-owned cooperatives and privately owned mills, as well as affiliated companies engaged in inspection and freight services, warehousing, exporting, food manufacturing, equipment manufacturing, port authorities, stevedoring, shipping and other industry representatives.

### U.S. Rice Trade Background

The U.S. rice industry has faced the rigors of international competition for many years and has maintained a 15 to 20 percent share of world trade. Today, U.S. rice is sold in 116 countries and our industry is widely recognized for quality and as a reliable supplier. Having a major stake in international trade, the U.S. rice industry believes it was important a good GATT agreement be reached in the Uruguay Round.

The U.S. is a competitive international rice marketer in spite of extensive government intrusion in the production and marketing sectors of our export competitors, current customers, and potential customers. Unfortunately, the damaging effects of such intervention will not be completely repaired with implementation of the Uruguay Round Agreement.

### U.S. Rice Trade Concern

While the end of import bans in Japan, South Korea and hopefully other countries provide a great deal of optimism for an expanded and strengthened world rice market, there are a number of trade practices among other countries, most notably the European Union (EU), Thailand, Vietnam and others which give rise to our concern.

Although agricultural export subsidies have been disciplined by the Uruguay Round agreement, they have also been legitimized by it. Their continued use, at a lower volume and expenditure rate, will continue legally sanctioned throughout the implementation period. We have every reason to believe the EU will, in fact, take every opportunity to fully capitalize on this new international understanding regarding export subsidies.

Mr. Chairman, it is critical that the U.S. government act to protect the international market interests of U.S. agriculture by fully utilizing export assistance allowed in the Uruguay Round agreement. We urge the use of each and every GATT legal tool to maximize exports of U.S. rice. This includes aggressive use of the Export Enhancement Program (EEP) when necessary. The EEP has helped the U.S. maintain important markets in the Middle East, Eastern Europe and the former Soviet Union, in spite of heavily subsidized EU competition. It is critical that the U.S. not unilaterally disarm while the Europeans fully utilize every export subsidy permitted under the GATT agreement.

Mr. Chairman, we request the EEP be made available for use in all markets where the U.S. faces subsidized competition from other countries such as Vietnam and Thailand. The EEP has never been used against Thailand or Vietnam in spite of ample evidence of export subsidies and subsidized state trading.

We also favor continued congressional funding of other market development and market expanding programs such as the Market Promotion Program (MPP) and the Foreign Market Development (FMD) Program.

In short Mr. Chairman, our competitors will continue to use programs that are allowed by Uruguay Round Agreement. If the U.S. does not do the same, we will lose past gains and future battles in important markets.



### U.S. Rice Position on Uruguay Round Agreement

The U.S. rice industry has been a strong, proactive supporter of U.S. efforts in the Uruguay Round since the outset of the negotiations. While the Agreement falls short of the original U.S. objectives, the industry fully supports the agriculture provisions because of the progress they will make in providing greater access to rice markets of GATT member countries. By not allowing provisions granting exceptions for rice, market access provisions of the Agreement, if fully implemented as the industry currently understands them, will establish new and expanded opportunities for rice exports.

We believe the removal of import bans, conversion of non-tariff barriers into tariff equivalents, reduction of tariffs and the decline in subsidized exports will significantly expand and improve the global rice trading environment. We urge the U.S. Government to aggressively seek to build on the progress that has been achieved with this Agreement in future negotiations. Moreover, given the likely entry of Taiwan to the GATT in the near future, the U.S. rice industry expects the U.S. Government to obtain, as a condition for accession, an agreement that provides for clear and significant rice market access.

Based on the information available as of today, we find the agreement to be reasonably equitable and reciprocal. While there are clearly different levels of concession required of some countries, we are satisfied that reduced concessions offered by developing countries relative to those offered by the U.S. are generally appropriate.

With regard to market access concessions offered by developed countries as of today, we believe there is generally an acceptable level of equity and reciprocity. For example, although Japan was not subject to immediate tariffication and a tariff reduction schedule under the terms of the Agreement, Japan offered a larger quota than required under the Dunkel formula. We find this arrangement to be adequate reciprocity. However, the industry has reservations over South Korea obtaining developing country status with respect to the agricultural provisions of the Agreement, a development which has enabled that country to avoid the more stringent disciplines imposed on developed countries.

With regard to the European Union, the EU's commitment to maintain its current import access levels for rice, while a positive development, falls short of meeting the Uruguay Round objective of expanding market access opportunities. The industry requested a tariff rate quota system be established by the EU to satisfy the market access objective of the negotiations. However, the EU rice market access provisions, including a bound tariff schedule and a bound margin of preference, could generate additional market access if implemented as the U.S. rice industry currently understands them.

Lastly, we are concerned that market access commitments and mechanisms for some countries have not been completed. And we believe it would be inadequate for those countries to be allowed to have binding commitments offering less access than a GATT member of comparable economic status using the EU, Japan and Korea as models.

In summary, we urge Congress to approve the Uruguay Round agreement but require the administration to (1) fully utilize all allowed export assistance and (2) accept nothing less than full compliance by all GATT members with terms, conditions and provisions established for their GATT determined economic status.

Thank you Mr Chairman for this opportunity for the Rice Millers' Association to make its concerns and hopes known to you and the Committee regarding the Uruguay Round agreement. I will be happy to answer questions.

Chairman GIBBONS. Thank you, sir.  
Mr. Schwensen.

**STATEMENT OF CARL SCHWENSEN, EXECUTIVE VICE  
PRESIDENT, NATIONAL ASSOCIATION OF WHEAT GROWERS**

Mr. SCHWENSEN. Thank you, Mr. Chairman.

I am Carl Schwensen, representing the National Association of Wheat Growers. I want to say at the beginning, sir, that we believe that the results of the GATT are very important to our industry. Our industry is in a very competitive world market. We have been experiencing for generations subsidies, particularly from Europe.

The agreement, as the previous witnesses have said, as devised, will implement a framework for staged reductions in export subsidies. Twenty-one percent in volume, 36 percent in value over the implementation period. We think it is important to mention in this regard that the agreement does not eliminate agricultural export subsidies. It only disciplines them and provides for their staged reduction. When they are fully implemented, in the case of wheat, about 14 percent less wheat will be subsidized into the world market.

We also note that the agreement fails to capture other export subsidizing systems, systems other than the United States and European Community, whose export regimes are very well known, are not the least bit discrete. This is a flaw in the agreement, in our judgment.

We hope to work in future opportunities to provide for complete elimination of trade distorting subsidies in the world wheat market, and we believe that the agreement in the future should focus more than just on two trade regimes, the United States and European Community, and should work to establish a fair pricing regime for all agricultural commodities moving into the world market.

Thank you.

[The prepared statement follows:]



# *National Association of Wheat Growers*

415 Second Street, N.E., Suite 300, Washington, D.C. 20002, (202) 547-7800

Statement of Carl Schwensen

National Association of Wheat Growers

before the

Trade Subcommittee

of the

House Ways and Means Committee

on the

Results of the Uruguay Round of Trade Negotiations

February 22, 1994

Mr. Chairman and members of the subcommittee:

I am Carl Schwensen, executive vice president of the National Association of Wheat Growers which is headquartered in Washington, D.C. The nation's wheat farmers thank you for this opportunity to present their views regarding the final outcome of the Uruguay Round of world trade negotiations.

Mr. Chairman, the National Association of Wheat Growers believes that the agricultural trade reforms which will result from the GATT are quite modest, but we feel that they are nevertheless important to the U.S. wheat industry and its future.

The Agreement provides a framework and specific obligations for the staged reduction of export subsidies (21 percent in volume and 36 percent in value over 6 years). This scheme stands to reverse the recent history of growing quantities of subsidized wheat entering the world market and direct competition between national treasuries for world market share.

The Uruguay Round accord provides that export subsidies will be eliminated on about 15 million tons of wheat annually when the agreement is fully implemented. This will amount to about 14 percent of world wheat trade. For the U.S., it will mean that the equivalent of the production from the states of Montana and South Dakota, or something less than the entire Kansas wheat crop, will not be eligible for export assistance in the year 2000.

For the European Community, the subsidy agreement means the equivalent of a poor wheat crop in Italy will not be subsidized into the world market.

From this perspective, you can see that, while halting the rising tide of export subsidies is an important accomplishment, the actual cutback is modest.



In this regard, something important is missing from this Agreement: it fails to capture all export subsidizing systems in its disciplinary scheme. The U.S. and the European Community are not the only nations with export subsidy regimes. Two big ones that are left virtually untouched are Canada and Australia which are among the 5 largest exporting nations in the world (U.S., EC, Canada, Australia, Argentina). There are other nations which escape reform under the Uruguay Round's export subsidy provisions, Saudi Arabia and Turkey for example.

Further, "price transparency", a pillar of trade reform, is not provided for in the final agreement. In the U.S., the price discovery process operating at locations like the Chicago, Kansas City and Minneapolis Boards of Trade is a totally open system. Likewise, our export subsidies are reported by press release for all to note. The final GATT text, however, imposes no reform on competing export systems that use monopoly powers to circumvent the principles of fair trade.

Mr. Chairman, I would like to close as I began with the statement that the Uruguay Round results for wheat growers represent helpful, but modest gains in reforming world wheat trade. There is no question that we will be better off with this agreement than with no agreement but benefits to U.S. wheat producers may not accrue until well after the year 2000. In the meantime, the world wheat market will remain a highly competitive place. We intend to make the most of the process established by this final agreement by continuing to press for the complete elimination of all trade-distorting export subsidies, not just those of the U.S. and the European Community, and the establishment of fair market pricing for wheat in the world marketplace.

Thank you.

Chairman GIBBONS. Thank you Mr. Schwensen.  
Mr. Blackburn.

**STATEMENT OF DONALD F. BLACKBURN, DIRECTOR, MEAT IMPORTERS COUNCIL OF AMERICA, INC., AND CHIEF EXECUTIVE OFFICER, AMERICAN FOOD SERVICE CORP., KING OF PRUSSIA, PA.**

Mr. BLACKBURN. Thank you, Mr. Chairman, and thank you for the opportunity to testify on the potential effect of portions of the Uruguay round agreement dealing with imported beef as it relates to the domestic U.S. economy.

My name is Donald F. Blackburn, and I am the director of the Meat Importers Council, commonly known in the trade as MICA, and chief executive officer of American Food Service Corp. of King of Prussia, Pa. With me, seated to my left rear, is MICA's counsel Rufus Jarman.

MICA is a trade organization whose members are responsible for most of the fresh-frozen imported beef received in this country under the meat import law, or "MIL." MICA's membership includes over 250 businesses, such as U.S. meat importers, meat processors such as my company, users and handlers of imported meat, shipping companies, port authorities, cold storage facilities, warehouses and others. My company, for example, produces hamburger patties which we supply to fast food restaurants and chains and private label consumer product suppliers.

MICA and its members strongly support efforts to liberalize trade. Therefore, we support that part of the Uruguay round, which, as we understand it, would replace the current meat quota system with a tariff rate quota permitting entry of a base quantity of 657,000 metric tons of meat with a provision for a possible 40,000 additional metric tons in certain circumstances.

Unfortunately, the GATT result is a mixed blessing as it would impose a prohibitive 31.4 percent duty on meat in excess of the base amount. Despite this unreasonable tariff, MICA believes that, on balance, GATT's outcome should provide significant benefit to the U.S. economy.

Almost all imports are used as ingredients in processed products, such as hamburgers, sausage products, pizza toppings and so forth. Although imports make up less than 10 percent of the total U.S. beef consumption and the United States now has a positive trade balance in beef, imports serve as a necessary supplement to U.S. production. Because they are frozen, because they are very lean and very consistent, they are necessary to companies such as mine and would be difficult or impossible to replace domestically.

Imported beef is important to the economy as a whole and to consumers by providing quality, diversity and value. It creates jobs and economic activity, particularly in the major port areas, such as the Philadelphia-Wilmington area, as Mr. LaRue of the port authority will describe later in the testimony.

The negative effects of meat access restrictions are chronic and well documented. Typically volume limitations take their biggest toll in the last quarter of each year, disrupting the continuity of supply and forcing product into bonded storage. Release at the beginning of the new year causes additional market disruption. Thus,

the meat import law has two primary effects on the U.S. market: Volume reduction and supply disruption.

The indicated Uruguay round outcome would be a substantial improvement over recent experience. For instance, in 1993 and 1994, meat access is at its lowest point in decades and trade distortion at its highest. The agreement should provide a measure of stability. With minimum annual base imports of 657,000 metric tons this agreement recognizes that the international market in meat is a reality and that the reduction in trade barriers benefits all concerned. The U.S. cattle industry will gain substantially through increased access to Asian and other markets.

Careful attention must be paid to implementing legislation and regulations to ensure the full potential benefits of the agreement are realized. Procedures are needed to avoid market disruption in any year when the base amount may be exceeded either on a global or individual country basis.

Most foreign exporters and U.S. meat importers are private, unrelated traders. It is difficult to imagine how they can negotiate unless there is certainty whether the product will or will not incur the 31.4 percent duty. This may require cooperation between the United States and foreign governments.

Related questions deal with procedures for reallocation between the individual countries and review of procedures for refund of improperly paid estimated duty; also rules for transition during rather than at the beginning of a calendar year.

If such practical concerns are not handled properly, the new system could be more trade restrictive than the old system. However, MICA feels confident that these questions can be duly resolved and looks forward to working closely with the administration and with Congress to implement the Uruguay round agreement.

We thank you.

[The prepared statement follows:]



BEFORE

SUBCOMMITTEE ON TRADE  
 COMMITTEE ON WAYS AND MEANS  
 U.S. HOUSE OF REPRESENTATIVES

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 TESTIMONY OF

DONALD F. BLACKBURN  
 ON BEHALF OF  
 MEAT IMPORTERS COUNCIL OF AMERICA, INC.

FEBRUARY 22, 1994

Thank you for the opportunity to appear today and testify on the effect of the Uruguay Round Agreement, if implemented, on the domestic U.S. economy and, in particular, on domestic consumers, importers, users and handlers of imported meat. My name is Donald F. Blackburn and I am a director of The Meat Importers Council of America Inc., and Chief Executive Officer of American Food Service Corporation of King of Prussia, Pennsylvania.

The Meat Importers Council of America, Inc. ("MICA") is a New York not-for-profit corporation whose members are responsible for an estimated 90% of the fresh frozen beef imported into this country -- the principal product covered by the Meat Import Law ("MIL"). This trade restrictive statute would be replaced pursuant to the recent GATT Agreement. MICA's membership includes U.S. meat importers, meat processors such as my company, and other users and handlers of imported meat, including shipping companies, port authorities, cold storage facilities, warehouses and others.

American Food Service Corporation is in the business of producing hamburger patties which we supply to major fast-food restaurants and chains, and private label consumer product producers.

MICA and its members strongly support efforts to liberalize trade. In particular, I am here today to express our support for the outcome of the Uruguay Round which is intended to replace the current MIL, a trade barrier which has caused significant disruption to meat processors and all the other industries which use and handle imported meat, and has harmed the U.S. economy and U.S. consumers. The Uruguay Round Agreement, as we understand it, would replace the current meat quota system with a tariff rate quota system permitting entry of a base quantity of 657,000 metric tons of meat with provision for a possible 40,000 additional metric tons in certain circumstances.

Unfortunately, the ad valorem tariff imposed upon meat in excess of the base quantity will be a prohibitive 31.4 percent, to be reduced only down to approximately 27 percent over six years. Despite our disappointment at the imposition of this prohibitive tariff, MICA does support the GATT outcome, on balance because it potentially liberalizes trade in meat products and should provide significant benefit to the United States economy and industry.

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* "Meat Import Act of 1979", Public Law 96-177, Dec. 31, 1979; replacing Section 2 of Public Law 88-48L, Aug. 22, 1964.

## THE ROLE OF IMPORTED MEAT IN THE UNITED STATES

Imports make up less than 10 percent of total U.S. beef consumption. According to the U.S. International Trade Commission, imports of red meat products totaled \$3 billion in 1991 while U.S. exports of red meat products were valued at \$4.3 billion."

MIL restricted meat enters through many U.S. ports on the West, Gulf and East Coasts. The principal port area is Philadelphia/Wilmington. Representatives from the port of Philadelphia are also providing testimony today on the importance of imported meat to economy of the region. The imports are transported to domestic meat processors across the country who process the meat for fast-food restaurants ground beef or other processed food products. Thus, most imported meat goes to the restaurant trade as hamburger patties, steak sandwiches, taco and pizza toppings, sausage manufacturing and specialty deli items, and other manufacturing uses.

Most imports are frozen manufacturing grade beef (grinding meat) for the fast food industry. Imported beef accounts for around 39 percent of the total grinding beef market and 93 percent of the frozen grinding beef market. This distinction between the fresh and frozen markets is important, because U.S. manufacturing beef producers concentrate on producing for the fresh beef market.

Domestic production of frozen grinding meat is low because of the high costs of freezing and storage and the fact that fresh meat is perfectly well suited to most manufacturing needs. Many processors, however, need to use a certain quantity of frozen material for temperature control in their grinding process. Furthermore, in some formulations frozen imported lean beef is needed to blend with fresh domestic beef in order to achieve the correct lean meat content and binding qualities in a standard hamburger patty. This is true of my company. In this respect, frozen imported beef and fresh domestic beef are complementary rather than competitive products. In addition to the grinding meat market, certain frozen lean meat cuts are in short supply in the United States. Both fast-food chains and processors need a reliable supply of imported lean meat to expand their businesses.

It is important to remember that imported meat undergoes significant value-added processing in this country. Thus, in addition to generating revenues for ports, shipping companies, trucking and warehouse industries, imported meat creates jobs in the meat processing industry. These benefits have been undercut by the operation of the MIL which imposes a quantitative limit on the amount of meat allowed into the United States. As part of the Uruguay Round Agreement, this quota law will be replaced with a tariff rate quota thereby improving access to the U.S. market for imported meat.

## THE NEGATIVE EFFECT OF U.S. MEAT ACCESS RESTRICTIONS ON THE DOMESTIC MARKET

The negative effect of meat access restrictions on the domestic economy is well-documented. The MIL established a quantitative limitation on the amount of imported meat which could

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" United States International Trade Commission, Investigation 332-325, November, 1993 p. 34.

enter the United States in any given year. In years when it appeared that imports would exceed that limit, the United States negotiated voluntary restraint agreements with Australia and New Zealand, the biggest suppliers of imported product. For the most part, these volume limitations came into effect in the last quarter of the year, thereby disrupting the continuity of supply and forcing product into bonded storage. That product would then be released at the beginning of the new calendar year causing additional market disruption. Thus, the MIL has two primary effects on the U.S. market -- volume reduction and supply disruption.

The volume reduction results in a loss of economic activity to the ports, shipping companies, trucking and warehouse industries that transport and store imported product. U.S. fast-food chains and processors also suffer significant injury. When the supply of frozen manufacturing grade beef is restricted, U.S. processors must pay more for frozen product or face shortages of raw material. This has a negative effect on the U.S. economy as fast-food chains and processors face increased costs of production and limitations on growth. Ultimately these costs are passed on in the form of higher prices.

The U.S. International Trade Commission estimated the net benefit to the U.S. economy of eliminating restrictions on meat access would be \$177 million for 1991.^{***} This alone would be reason to eliminate these restrictions, yet this amount seriously underestimates the negative effect of this law on the domestic economy because it fails to recognize the disruption caused by the imposition of a quota. When a quota is imposed, supplies are curtailed, meat must be stored in cold storage incurring added costs and overhanging the market in the next year. Thus, the benefits to the economy of eliminating these restrictions are even more significant than estimated by the U.S. International Trade Commission.

#### THE URUGUAY ROUND AGREEMENT

For meat processors and meat importers, the Uruguay Round outcome as we understand it would be a substantial improvement over the access allowed in 1993 and this year for meat imports. However, 1993 and 1994 meat access is at its lowest point in decades and market disruption is at its highest. During the negotiations, MICA supported a base quantity amount of 700,000 metric tons to allow for growth in the marketplace. In addition, MICA urged the Administration to seek a reasonable tariff, one less than 10% rather than the current unreasonable tariff of 31.4%. Despite the fact that the Uruguay Round has not given us the access to imported product which we sought, and which we feel the United States needs to ensure growth in a dynamic marketplace, we nonetheless have determined to support Congressional implementation of the Agreement.

The Uruguay Round Agreement will improve the current situation with respect to meat access and will provide a measure of stability to the imported meat market. Under this Agreement, imports of 657,000 metric tons will be allowed each year. An additional 40,000 metric tons is reserved for new entrants. Imports over the base quantity amount will be permitted by paying a tariff of 31.4 percent ad valorem which will be reduced down to about 27 percent over a six year period. The need for stable access to the United States market is particularly clear in view of the substantial success that the U.S. cattle industry has had in

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^{***} Id. at 36.



penetrating foreign markets. This Agreement recognizes that the international market in meat is a reality and that the reduction in trade barriers benefits all participants in this trade. This is particularly true for meat, as the U.S. cattle industry will gain substantially through increased access to Asian and other markets. Recognition of these benefits has led the National Cattlemen's Association to endorse the Uruguay Round.

The meat access provisions of the Uruguay Round can provide substantial benefit to domestic meat processors, restaurant chains and other users and handlers of imported meat, and will have a corresponding benefit to the U.S. economy as a whole and U.S. consumers. In view of these benefits, we endorse the Uruguay Round outcome. However, careful attention will have to be paid to the implementing legislation and regulations to ensure that the full potential benefits of the Agreement are realized. One area of particular concern to our industry is the need for procedures to be worked out which will avoid market disruption in any year when the base amount is or may be exceeded, either on a global, or individual country basis. It is difficult to see how buyers and sellers can negotiate unless there is certainty whether product will, or will not, incur the 31.4% duty. This could be a real problem in view of the fact that contracts are made months ahead of actual importation and delivery. We believe that this may require a degree of cooperation between the United States and foreign supplying countries. Related questions deal with procedures for reallocation between, and with consent of, individual countries when economic conditions warrant, and review of adequacy of procedures for refund of estimated duty paid above the base amount if it turns out not to properly have been due. Careful attention will also need to be paid as to how the transition from the MIL to the Uruguay Round Agreement will be made if, as is indicated, the change is effective during, rather than at the beginning of, a calendar year. If such practical concerns are not handled properly, it is possible to envisage scenarios where the new system would be more trade restrictive than the old system. However, MICA feels confident that these questions can be duly resolved, and looks forward to working closely with the Administration and Congress to implement the Uruguay Round Agreement.

Thank you.

**Meat Importers Council of America, Inc.**

Chairman GIBBONS. Well, thank you, Mr. Boutwell. I particularly appreciate your calling attention to the fact that every time we look at this GATT, we have to compare it with not what we would like to have but what we actually have.

I am glad to see that very strong realism in the business sector. Of course, I would expect it from the business sector, but we hear from so many theoreticians around here that oppose something just because it is not perfect. What we have here is a hell of a lot better than at present, and we would be stupid not to take it.

Mr. Watts, I am a fellow whose grandmother started him off on rice, many, many years ago, and every meal she had rice and she cooked it in the traditional U.S. way that comes out with separate grains. But I found out I like the Japanese rice better. What am I looking at—a way of cooking or a different kind of rice?

Mr. WATTS. First off I want to compliment your grandmother on being ahead of the times. Of course, rice is very important to good nutrition, as you would be aware. I don't necessarily think it is an improved type of rice, I think it is a difference, just like a difference between types of apples. You can have different varieties which lend to different—

Chairman GIBBONS. I like the kind that sticks together.

Mr. WATTS. Try some U.S. medium grained rice.

Mr. THOMAS. Mr. Chairman, it is called Cal-Rose, and the Japanese love it, and a bag is on its way to your office and you will find it has the agglutination you have been looking for, far superior to that product you have been consuming in Japan.

Chairman GIBBONS. But how do you cook it?

Mr. THOMAS. Basically, you cook it the same, but rather than the long grain, which is traditional Arkansas-Texas rice, the medium grain, which is fatter and shorter, does cling together and has the agglutination that you are describing, which is just a different way of heating rice.

Frankly, we enjoy long grain and medium grain. It shows you there are differences between rice and there are different ways to heat it for different recipes.

Mr. WATTS. And, Mr. Chairman, I would be glad to send you some new cooking instructions.

Chairman GIBBONS. All right. Well, no reflection on my grandmother, but I just found in my journeys around the world that I like that sticky rice better than I do the other kind of rice.

Mr. WATTS. That is why they make chocolate and vanilla.

Chairman GIBBONS. That is right. I like both of them. OK.

Well, Mr. Blackburn, remember, I was here in Congress when we passed that crazy meat law. And I didn't vote for it then and I don't like it now. I didn't know how they were going to tariff it, but I guess they have.

You say that what we have in the Uruguay round is better than this law we have had for about 30 years now.

Mr. BLACKBURN. We surely believe that and we appreciate your support in the past.

Chairman GIBBONS. Mr. Schwensen, they don't grow any wheat in Florida, so I don't know a heck of a lot about your product, except I am sure I eat a lot of it.

OK, Bill.

Mr. THOMAS. Thank you, Mr. Chairman.

I might add, if you will cut down the water in your recipe by one-third to one-half, it is harder to clean out the pan but you do get the agglutination.

Chairman GIBBONS. I tried that but I just burn the hell out of it.

Mr. THOMAS. I will talk to you after the hearing.

First of all, I want to personally welcome Mr. Boutwell, and I too support the forward-thinking position of looking at where we are and where we are going to go rather than where we want it to go.

I have a real concern, having begun my congressional career on the Agriculture Committee and gone through farm bills, that even though the agreement does place sanitary and phytosanitary restrictions on a scientific basis, that we will wind up with dueling scientists, which I guess is better than dueling politicians in terms of narrowing the hypocrisy, but it is still the old argument that you have it if you can keep it. And I think all of your attitudes clearly were that you are going to have to fight for it.

I am personally concerned about the subsidy increase near the end of the negotiations. Because over the years, when I first put in the Targeted Export Assistance Program, which has now turned into EEP—I always liked TEA rather than EEP in terms of describing what we did—and we targeted export assistance in areas that were being bombarded by subsidies, principally from Europeans. I think this gives them a larger playingfield than I had wanted to continue those kinds of activities.

I am not optimistic that our government will be as aggressive in these areas as they should be in relation to European and other subsidy programs, and you folks are going to have to earn your keep by being very aggressively on us to make sure that that has occurred.

I also just want to say I appreciate all of your attitudes in terms of understanding that this was a whole lot like some of our earlier farm bills, and that was it is more important to be in it than what circumstances you found yourself in it, because we are going to have continued negotiations and to have left this area out or to have opposed a bill that is good in so many other areas would have put us, I think, at a disadvantage.

I think you have to begin today in working on that next round, because if you do not have an administration, whichever administration it is, that has been sensitized to the ability of other countries to continue, Mr. Boutwell, as you said quite correctly, to continue to have a number of agricultural policies which clearly subsidize and go right up to not just the letter but the spirit of this agreement in terms of violating and in support of their agricultural goods, we have to be aggressive in protecting ours, but you have to be aggressive in making sure that we are aware of our failures and some of the things that are going on. Because when we move into the next round, agriculture is on the table and it is imperative we take that next step forward.

So thank you very much for your enlightened position, but also thank you for all the work you folks did to make sure that we have this broad-based support on an agreement that is good. Not as good



as it could be, but better than it has been. So thank you very much for your continued hard work and labor.

Chairman GIBBONS. Nancy.

Mrs. JOHNSON. I have no questions, Mr. Chairman, but I do appreciate your pointing out the strengths of the agreement but also the weaknesses because this is an ongoing agenda, and while there are parts of the agreement that I think are really outstanding and overall support it, there is an agenda yet to be accomplished.

Thank you.

Chairman GIBBONS. Mr. Payne.

Mr. PAYNE. Thank you, very much, Mr. Chairman.

I, too, wanted to echo the remarks of my colleagues and to thank you all for being here to testify and particularly for the constructive testimony and constructive attitude regarding the GATT.

I don't have any questions and, Mr. Chairman, since I cannot add anything to the rice discussion, I will yield back my time.

Thank you.

Chairman GIBBONS. OK. Thank you very much. Thank you all.

Let's get the next panel up here. Semiconductor Industry Association, Computer and Business Equipment Manufacturers Association; Aerospace Industries Association; and American Electronics Association.

Go ahead, please, George.

**STATEMENT OF GEORGE M. SCALISE, CHAIRMAN, PUBLIC POLICY COMMITTEE, SEMICONDUCTOR INDUSTRY ASSOCIATION, AND SENIOR VICE PRESIDENT AND CHIEF ADMINISTRATIVE OFFICER, NATIONAL SEMICONDUCTOR, SUNNYVALE, CALIF.**

Mr. SCALISE. Thank you, Mr. Chairman.

First of all, the semiconductor industry is pleased to have the opportunity to testify here today on this very important issue. It is certainly one of our top-priority public policy issues for this year.

I am George Scalise, senior vice president of National Semiconductor and also the chairman of public policy for the Semiconductor Industry Association.

As you may know, the SIA is comprised of U.S.-based semiconductor companies. We represent about 85 percent of the sales of semiconductors here of the U.S.-based companies employing about 240,000 people here in the United States, and last year had revenues approaching \$35 million, half, obviously, which are exported. So it is a very major export industry.

I am also pleased and proud to be able to state that we have regained the No. 1 position worldwide market share. We regained that position having lost it to Japan about 10 years ago and through the aggressive efforts of the industry, and I would also say the enlightened support of government as it deals with market access and dumping issues, we have regained that position and we are very pleased with that.

I would also like to commend the group that handled the negotiations. I think Ambassador Mickey Kantor and his team did an outstanding job, and I would also like to thank the many members of this committee, many of whom were in Geneva during the latter

stages of those negotiations and I think made a significant contribution to the overall success of the agreement.

So we do urge the Congress to enact the legislation which implements the agreements that were reached in December on the Uruguay round of GATT.

What I want to do is just spend a couple of minutes touching on a few of the highlights we think need to be dealt with in the enabling legislation, the first having to do with the antidumping law.

In the mid-1980s, predatory dumping on the part of Japan nearly destroyed the U.S. semiconductor industry, and were it not for the dumping law and the appropriate use of it, I think there would be a real question of whether or not this industry would exist or certainly exist with the strength it enjoys today.

After that dumping law was implemented and the relief obtained, as I said, over the past 10 years we have regained our strength and are now No. 1 in the world once again. The new Anti-dumping Code now requires changes to procedures for initiated investigations, the rules for governing the determination of dumping margins and the duration of antidumping remedies. So we think it is essential that in this enabling legislation U.S. law be as effective as the new code permits. This will mean amending some of the U.S. law to take advantage of the GATT legal procedures.

One of the other areas I want to touch on as deals with the dumping issue is circumvention. The new code is silent with regard to the appropriate measures to combat circumvention of antidumping duty orders. We think it is very important that this be dealt with because oftentimes a company will, once found guilty of dumping, will simply source that same product from another plant in another country, and the United States should take advantage of the code of silence here and make certain we strengthen the remedies against circumvention.

The 301 Code is another area we think is extremely important. As we go back and look at our success in regaining our No. 1 position, one of the major elements in helping to do that was the use of the 301 Code to pry open the Japanese market. Prior to having had that implemented, we enjoyed about an 8 percent or so market share in Japan.

Through the combined efforts of the industry and the government—and they have been very supportive on this issue—we now have a market share that approaches some 20 percent of that market and it is one that we think we should even gain more access to as time goes on. So it is only through the use of the section 301 was U.S. industry able to get around the cartelization that has taken place in Japan.

So, again, we think the implementing legislation here must preserve U.S. rights to act unilaterally in areas not covered by the GATT, such as toleration of cartels.

Section 337 of the Tariff Act of 1930 authorized the exclusion of products from the United States that infringed U.S. patents and this has enabled many U.S. industries to counteract foreign infringement of U.S. patent rights. Because a foreign infringer is not in danger of having to stop producing the product, though, as an adjudicated U.S. infringer would be, faster and more effective sanc-

tions against foreign infringers must be implemented and this must be again a part of that enabling legislation.

In the area of tariffs, there was substantial progress made. However, with regard to semiconductors, we think there is still a long way to go. We currently have no tariffs coming into the United States. The major tariff that still exists now, there are others, but the major one is going to Europe, of roughly 14 percent. This costs the U.S. semiconductor industry somewhere in the vicinity of \$300 million a year.

With the changes to the code that are now included in the agreement, these will be reduced somewhat over the next 10 years, but because of the selection process and the rate, the actual cost to U.S. industry will continue to grow, so that we will really not see a reduction in tariffs although we may see a reduction in rates.

So we do encourage continued negotiating authority in this area. We would like to see a major effort put in to eliminating those tariffs over some period of time.

Finally, this is the first GATT round to cover the issue of protection of intellectual property, and this is a very critical issue to the semiconductor industry, which invests about 11 percent of its sales in R&D. This compares with something along the lines of 3 to 4 percent of U.S. industry as a whole. We were very pleased the agreement does limit compulsory licensing and we think that again is a very important part of this agreement that must be preserved.

So with that as a summary, the SIA, as I said at the outset, strongly supports the conclusion of the successful Uruguay round and we support the U.S. Congress in the enacting of the legislation that will put it into effect.

Thank you, Mr. Chairman.

[The prepared statement follows:]



**STATEMENT OF GEORGE M. SCALISE  
SENIOR VICE PRESIDENT AND CHIEF ADMINISTRATIVE OFFICER, NATIONAL  
SEMICONDUCTOR, AND CHAIRMAN, PUBLIC POLICY COMMITTEE,  
SEMICONDUCTOR INDUSTRY ASSOCIATION  
ON BEHALF OF  
THE SEMICONDUCTOR INDUSTRY ASSOCIATION**

The Semiconductor Industry Association (SIA) is pleased to have the opportunity to submit testimony to this subcommittee about an issue which is one of SIA's top public policy priority -- implementing legislation for the Uruguay Round of the GATT which enhances and strengthens U.S. trade laws. My name is George M. Scalise. I am the Senior Vice President and Chief Administrative Officer of National Semiconductor and Chairman of the SIA's Public Policy Committee.

SIA is comprised of U.S.-based semiconductor manufacturers. Its member companies account for 85 percent of U.S. semiconductor production and employ over 240,000 Americans. A list of member companies is attached. SIA was created in 1977 to address the public policy issues confronting the industry. SIA concentrates its energies on those issues which affect the ability of the industry to remain internationally competitive.

SIA last testified before this Subcommittee in November of 1993. When we reviewed the Uruguay Round as it was then written, we strongly felt that the Round would not be in the best economic interests of America. We are pleased today to give you our views on what we now feel is a good agreement for America. The Round was vastly improved by the talented U.S. negotiators, led by Ambassador Mickey Kantor, and the many Members of Congress who intervened on behalf of American industries. On behalf of the U.S. semiconductor industry, I thank all involved for their efforts to greatly improve this trade agreement.

SIA urges Congress to enact legislation which implements the agreements reached in December in the Uruguay Round of GATT negotiations. The agreements will provide greater market access abroad for semiconductor products through the elimination of tariffs and reductions in tariffs and will help U.S. semiconductor manufacturers protect their intellectual property from foreign infringers. However, the agreements could be implemented in a manner that weakens U.S. laws combatting foreign unfair trade practices, threatening the very existence of our industry. U.S. trade laws must be strengthened to the extent permitted by the Uruguay Round agreements.

#### **Uruguay Round's Impact on U.S. Trade Law**

##### **The antidumping law.**

In the mid-1980s, predatory Japanese dumping nearly destroyed the U.S. semiconductor industry. After antidumping relief was obtained, it has still taken the better part of a decade for the U.S. industry to regain its former preeminent position. The industry has never regained full competitiveness in some important product sectors, such as DRAMs. A major Uruguay Round goal of Japan and its satellites was weakening antidumping enforcement. The new Antidumping Code requires changes to procedures for initiating investigations, the rules governing the determination of dumping margins, and the duration of the antidumping remedy. It is essential that U.S. law be as effective as the new Code permits. In some cases, this will mean amending U.S. law to take advantage of GATT-legal procedures utilized by other countries, but not by the U.S.

SIA supports the numerous proposals made by domestic manufacturers to strengthen our trade laws. Some that are of particular interest to our industry are the following:

Support for petitions. The new Code requires that at least 25 percent of domestic industry support an antidumping petition. The GATT definition of "industry" permits exclusion of companies that purchase the imported product under investigation or are related to exporters accused of dumping. Implementing legislation must require that any such companies that oppose a petition will automatically be excluded from the domestic industry for purposes of determining industry support.

Startup costs. The new Code requires that in investigations where cost of production is an issue, costs during startup be disregarded, and the costs at the end of the startup period be utilized instead. Congress must define when the startup period ends. In semiconductor production, costs decline rapidly throughout the life of a particular product, so to the untrained eye it might appear that the startup period never ends. Congress should make it clear that a startup period cannot extend beyond the point where the product is being sold in commercial quantity.

Causation of injury. In at least one investigation in the 1980s, despite overwhelming evidence of predation and U.S. industry losses in some quarters exceeding total sales, two ITC commissioners managed to rule against the industry. The current injury test is much more stringent than the GATT requires, and should be clarified to make the law available.



Moreover, industries ought not have to wait until they have nearly been eliminated before receiving relief from dumping. Foreign industrial targeting should be recognized as an aggravating factor in the injury analysis.

Duration of orders. The Code requires that orders terminate within five years unless the administering authorities determine that termination is likely to lead to continuation or recurrence of injury. Congress must provide guidance to the ITC regarding factors to be considered in this analysis. Investment by the domestic industry that makes it more vulnerable to renewed or continued dumping, unutilized foreign production capacity, and evidence of dumping in other markets all should be listed as important factors in the analysis.

Anticircumvention. The new Code is silent regarding appropriate measures to combat circumvention of antidumping duty orders. Often a company found guilty of dumping will simply source from one of its plants in a different country. The U.S. should take advantage of the Code's silence to strengthen its remedies against circumvention.

Sales by related importers. Under current U.S. practice, antidumping duty margins assessed on transactions where the importer is a subsidiary of the exporter will be lower than on the identical transaction between the exporter and an unrelated importer by the amount of the profit realized by the related importer when it resells the merchandise. This loophole is not required by the GATT and should be closed.

In addition, a related importer is now permitted to pay antidumping duties and not raise its prices at all, with no effect on antidumping margins. The result is that a deep-pocketed predator can continue to injure domestic industry despite the existence of an antidumping duty order. This loophole too should be closed.

Compensation. In the circumstance just described, where the domestic industry is deprived the pricing relief contemplated by the law, at least some portion of the duties paid should be returned to the industry as compensation by the company that continues to dump.

### Section 301

Japanese predation was made possible by the government of Japan, which encouraged cartelization and closure of the Japanese semiconductor market. Only through use of section 301 was the U.S. industry able to increase its share of the Japanese market (briefly hitting 20 percent, less than half of the U.S. share of markets in the rest of the world). The existence of automatic GATT-authorized counterretaliation will make it very unlikely that the U.S. government will repeat the sanctions it levied to achieve greater market access in Japan. The implementing legislation must preserve U.S. rights to act unilaterally in areas not covered by the GATT, such as toleration of cartels. There also should be a new, explicit, remedy against foreign anticompetitive behavior that burdens or restricts U.S. commerce.

Section 337

Section 337 of the Tariff Act of 1930, authorizing exclusion of products from the United States that infringe U.S. patents, has enabled semiconductor manufacturers to counteract foreign infringement of their U.S. patent rights. This statute, declared violative of U.S. GATT national treatment obligations by a GATT panel, remains an essential part of the arsenal protecting intellectual property rights. Because a foreign infringer is not in danger of having to stop producing a product, as an adjudicated U.S. infringer would be, faster and more effective sanctions against foreign infringers are a necessity. Section 337 should be amended to conform it to the panel report, either by abolishing its current statutory time limits, or by some other means such as transforming it into a provisional remedy.

The escape clause.

Section 201 of the Trade Act of 1974, which implements U.S. rights to protect industries seriously injured by rising imports, is effectively a dead letter because the standard for showing that imports have caused serious injury, that no cause of injury be greater than imports, is nearly impossible to meet. This standard is not required by the GATT Safeguards Code, and should be conformed to the GATT standard of serious injury -- significant overall impairment in the position of a domestic industry.

**The Uruguay Round's Impact on Tariffs**

The Agreements will bring about a reduction in some tariffs levied on semiconductor products. The European Union will replace its 14 percent duties over a ten year period with



a range of tariffs on different types of semiconductors that effectively reduce duties by a third. Korea will eliminate its ten percent duty over a five year period. The U.S. must continue to emphasize to these nations that semiconductor duties only increase costs for their domestic electronics industries, and encourage these nations to accelerate their duty reduction programs.

#### **The Uruguay Round's Impact on Intellectual Property Protection**

This is the first GATT round to cover the issue of protection of intellectual property. This is a critical issue to the semiconductor industry which spends 11 percent of its revenue on research and development. SIA is pleased that the final agreement includes a specific limitation on compulsory licensing of semiconductor technology. SIA also supports the efforts of other domestic industries to increase protection from compulsory licensing of products for non-public use.

#### **Conclusions**

SIA strongly supports the conclusion of a successful Uruguay Round to expand world trade and enhance and protect our domestic trade laws.

Chairman GIBBONS. Thank you, Mr. Scalise.  
Mr. Tasker.

**STATEMENT OF JOSEPH TASKER, JR., DIRECTOR, FEDERAL REGULATORY AFFAIRS, COMPAQ COMPUTER CORP., ON BEHALF OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION**

Mr. TASKER. Thank you, Mr. Chairman.

Good morning. I am Joe Tasker, director of Federal Regulatory Affairs, Compaq Computer Corp., here on behalf of CBEMA, the Computer and Business Equipment Manufacturers Association. We represent about \$270 billion in sales, something like 4.5 percent of the U.S. GNP, and we represent or we have about 1 million workers here in the United States and more than half of our collective revenues are accounted for by sales in overseas markets.

I think that you said it best, Mr. Chairman, a few minutes ago when you said realism was the key to this morning's activity. We agree with you. When you look over the agreement as a whole, you can see some things that were not accomplished, but it becomes clear that the administration did a superb negotiating job. The United States was able to get the best deal it could under the circumstances, and we have made significant progress toward opening global trade. We are strong supporters of the Final Agreement and want to do everything we can to work with you and the Congress to secure its prompt implementation as soon as possible.

There were three issues that were of particular interest to us through the process. They are market-to-market access negotiations, the TRIPs negotiations, and the Antidumping Code revisions and reform.

On market access, we have long been supporters of a zero-to-zero tariff initiative. As others may discuss on the panel this morning, the U.S. tariffs on computer parts and semiconductors are zero, Japanese tariffs on semiconductor computer parts and computers are zero. The main problem is Europe, where the tariffs range from 4 to 5 percent on computers and parts up to, as Mr. Scalise pointed out, a whopping 14 percent on semiconductors.

We made a lot of progress, but it was not what we would consider to be sufficient, particularly in the area of semiconductors where it is not just a continuation of high tariffs but a confusing series of different tariffs for different classes of semiconductors. Where once we had one, now we have six different varieties of tariff reduction schedules, and it becomes extremely confusing and rife for abuse on the part of Customs officials and rife for a mistake on the part of companies.

In addition, there are some sectors in which the progress was so slow we are going to go from 4 percent to 2 percent in stuffed circuit boards for computers over a period of 8 years. So we will see a staged reduction of about—well, what is that—.25 percent a year, which is almost not worth the accounting trouble for your Customs administration within the companies to take care of.

In any case, we would not be candid if we did not say we were disappointed with these results. As a result, we are supporters of continuing negotiating authority on tariffs to treat this as a continuing agenda item. We think very strongly we should continue to

work on the tariff matter. It is a matter of great concern to us and a matter of a lot of money for all of our companies.

On TRIPs, our members are major creators and users of all forms of intellectual properties. We too are major investors of R&D, at about the 8 or 9 percent of sales range. The TRIPs agreement provides a welcome baseline of coverage for all GATT members: Copyright protection for computer software; good rules on rental rights; enhanced enforcement against piracy and counterfeiting; GATT dispute settlement machinery; and recognition of trade secrets as a form of intellectual property.

That is good news. It is tempered, however, with some bad news or at least ambiguous news, and that is the extent to which we have transition periods before many of the countries are obligated to take the new GATT agreements. Some developing countries have until even 2005 before they are required to fully implement.

We do not think they need to take that long, especially in regard to some of the issues such as copyright piracy. This is a big problem in our industry.

My testimony notes losses on the order of \$2 billion a year from a select group of GATT member countries, and the USTR has been negotiating with these countries for a long time. We need to be prepared to use the special 301 tool and whatever else we can to address this problem before full GATT implementation is due if countries take unfair advantage of the implementing period to allow copyright piracy to continue to go unchecked in their markets.

Along these lines, we would note that the generalized system of preferences has sometimes been a useful tool for getting leverage in some marketplace markets to help them improve their intellectual property climates, and we would urge its renewal so it can continue to fulfill that role.

Finally, Mr. Chairman, on dumping, the U.S. negotiators in Geneva at the end of the day did a masterful job, we think, of taking into account a wide range of American interests that are involved in the implementation of the antidumping law. American industry is a major user of the antidumping laws, but it is also important to point out that, in the aggregate, American industry is the single largest target of foreign dumping laws. And foreign countries, our trading partners, look to the United States as a model for their legislation, so we can expect them to do what we do.

Implementing legislation, in our view, has to maintain the careful balance that was struck in Geneva. There are proposals on the table to upset that balance, to create a kind of open season on the dumping law, and there are a lot of wish lists circulating around for amendments. We strongly urge you to firmly reject those proposals and the temptations that they represent. And we can go into excruciating detail at any time with you and your staff on how the proposals work, how all the amendments are structured and what their effect might actually be.

Consistent with balancing these interests, we think the U.S. dumping law should do a better job of balancing the interests of domestic producing and consuming industries, referring to cases in which domestic producers obtain relief but are incapable of meeting demand for critical components of consuming industries, and in the



marketplace, as global competitors, we have to take these interests more into account.

Thus, we are strong supporters of short supply legislation along the lines of the system the steel industry used in 1980 as a way to address this problem. This is set out in the testimony, and we look forward to working with you and your staff to talk about it further.

In conclusion, I want to thank you again for the opportunity to express these views. We applaud your work and the work of your committee to get into this matter quickly and thoroughly, and we look forward to getting it over and done with as quickly as we can.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT OF JOSEPH TASKER, JR.  
DIRECTOR, FEDERAL REGULATORY AFFAIRS, COMPAQ COMPUTER CORPORATION  
ON BEHALF OF THE  
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION**

Mr. Chairman, I am Joe Tasker, Director, Federal Regulatory Affairs for Compaq Computer Corporation, and I am testifying on behalf of the Computer and Business Equipment Manufacturers Association (CBEMA). CBEMA represents the leading U.S. providers of information technology products and services. Its members had combined sales of \$270 billion in 1992, representing about 4.5% of our nation's gross national product. They employ over one million people in the United States.

It is a great honor and pleasure to appear before your Committee today to discuss the impact of the recent Agreement under the General Agreement on Tariffs and Trade on the information technology industry. CBEMA's members strongly support open trade and the development of global markets. The global market place is extremely important to CBEMA members as typically over 50% of their revenues are derived abroad, and their economic health depends on a broad-gauged U.S. policy aimed at facilitating their efforts to compete worldwide.

The Administration did a superb job of negotiating the Uruguay Round and they should be congratulated for their hard work and success in the negotiations, and especially in the final weeks, when the most progress was achieved. The successful conclusion of the GATT Uruguay Round was a significant step forward, and CBEMA plans to lend its full support to ensure its prompt implementation.

During the negotiations CBEMA members were particularly concerned with three areas: zero-for-zero tariff elimination, the TRIPS Agreement and antidumping provisions. My testimony will focus on the concerns of the information technology industry in these critical areas.

### **ZERO-FOR-ZERO TARIFF ELIMINATION**

Throughout the Uruguay Round negotiations CBEMA strongly supported the Administration's zero-for-zero initiative for the elimination of tariffs on certain electronic goods. We worked with USTR to eliminate the duties that adversely affected CBEMA members' ability to compete in the global market: computer parts and peripherals, finished computers, semiconductors, copier parts, accessories and toners. These tariffs significantly reduce the revenues and market share of U.S. information technology firms, especially those doing business in Europe. Neither the U.S. nor Japan, the two largest computer manufacturing countries, have tariffs on imported computer parts or semiconductors. But the European Union does. In fact, the only other major industrial country that imposes a tariff similar to the EU is South Korea, and South Korea had offered to lift its tariff if the EU did the same.

Our economic analysis show that U.S. information technology companies would have realized \$500 million to \$1 billion in annual cost savings if all these electronics tariffs were eliminated. Unfortunately, despite the best efforts of the Administration, complete duty elimination was not achieved.

Substantial progress was made in reducing tariffs on copier parts, accessories and toners; and tariff elimination was achieved on a wide range of peripheral units, certain kinds of computer parts and a few semiconductors. On the other hand, however, the negotiations on semiconductors wound up with an astounding range of different duty rates and staged reduction schedules for different types of chips — a situation that invites mistake and abuse — and the duty rates for electronic assembly computer parts will be cut in half, but over a period of 8 years. Reducing a 4% parts duty to 2% in eight incremental annual stages is hardly any progress at all.

In summary, we appreciate the progress that has been made, but we are somewhat disappointed in the overall results. The Administration negotiated the best deal it could, in the face of a European industrial policy determined to protect its semiconductor industry through maintenance of a tariff

wall. This industrial policy, which has not helped the European industry flourish in the past, will not make it any more a success in the future. It will simply continue to have a trade distorting economic impact on both U.S. and European computer and business equipment manufacturers.

## TRIPS AGREEMENT

The TRIPS Agreement in the new WTO Agreement establishes the baseline of protection and standards of enforcement that our companies need to carry forward the job of reducing piracy of intellectual property. CBEMA members are wholeheartedly in support of these standards of protection and enforcement and we hope that through the dispute settlement process and the real threat of cross-sectoral retaliation, we will be able to complete the task of lifting the level of protection and enforcement worldwide up to modern and necessary levels.

The Agreement assures high and uniform levels of copyright protection for the 117 GATT members. It resolves many of the critical trade issues faced by our companies as a result of changes in technology, by providing:

- protection of computer programs as literary works and electronic databases as compilations under the Berne Convention;
- an exclusive right to control the rental of computer programs;
- detailed obligations in the area of enforcement including remedies available in civil cases, a requirement of deterrent criminal fines and jail terms in the area of copyright piracy and trademark counterfeiting, and effective border control to prevent imports of products infringing patents or copyrights;
- a significantly revised GATT dispute settlement machinery, ensuring rapid conclusion of cases, preventing the guilty party from blocking sanctions, and making the taking of cross-sectoral retaliation automatic against the guilty party; and
- recognition of trade secrets as a form of intellectual property.

While these developments were extremely positive for our industry, the problem of overly long transition periods has cast something of a pall over our otherwise positive reaction to the Agreement. This is not an abstract issue. Most copyright piracy occurs in developing countries that are given an extra four years, and in some cases up to 10 years, to comply with the agreement.

The TRIPS Agreement continues to permit those countries that qualify as "less developed countries" an additional four years beyond July 1, 1996 (the date for all "developed" countries). That gives them until July 1, 2000 before they must bring their domestic legislation and enforcement regimes into full compliance with the obligations in the Agreement. The countries in transition to market economies also may benefit from this additional transition period. Countries qualifying as "least developed countries" can take until July 1, 2005 to bring their regimes into compliance.

At present, there are a large number of developing countries that, as a result of inadequate legislation or lax enforcement, cause, collectively, billions of dollars in lost jobs and income to the United States. As the result of an aggressive bilateral program using Special 301, Section 301, the Generalized System of Preferences Program (GSP) and similar programs, the U.S. Government has succeeded in bringing many of these countries to within months of compliance with the basic obligations in the TRIPS Agreement. Countries like Thailand, Turkey, Egypt, South Korea,



Indonesia, Brazil, Venezuela, Philippines, India and Poland (all GATT members), to name but a few, together account for an estimated \$1.8 billion in losses due to piracy of U.S. copyrights. Were all these countries to take full advantage of their transition rights under the Agreement (and assuming losses remain at the same level as in 1992; though they are likely to increase), the U.S. economy would lose an additional \$7 billion over that four-year period. This is a staggering blow to these industries and to the U.S. economy as they seek to add the new high-tech and high-wage jobs necessary for this country to be competitive into the next century.

What is apparent is that none of these ten named countries needs or deserves to take an additional four-year period to deal with the problem of copyright piracy. USTR has been negotiating with each of these countries for well over five years already; many have indicated their commitment to significantly reduce piracy in 1994 or are already in breach of existing bilateral commitments to the United States. For any of these countries to take advantage of their rights under the TRIPS Agreement would be an outrage that the United States simply must not tolerate. Unfortunately, the TRIPS Agreement could condone such action. The United States simply must not permit our key developing country trading partners to take advantage of this transition period and all the tools available to our government must be brought to bear to prevent it.

We believe through an aggressive stance by the Administration and a careful inventory of carrots and sticks available to our trading partners, the impact of the deficiencies in the agreement can be remedied, or at least mitigated. But we must seek out all tools, not just trade tools. We must begin to coordinate U.S. economic and trade policy to reach one objective - ensuring that intellectual property is protected so that our productive companies and their employees can compete fairly and effectively.

Mr. Chairman, we want the Congress to reauthorize the GSP program which gives the U.S. leverage in a WTO world where old sanction remedies are not as easily available. Special 301 must continue to be used as it has, and in our view there is nothing in the WTO Agreement to prevent it. Other government benefits should be denied to countries which unfairly take advantage of the transition period or continue to deny national treatment to our authors and inventors.

Congress should mandate the Administration to undertake an inventory of trade and non-trade measures available to the U.S. both before and after the WTO effective date, and continue aggressive use of Special 301, preferential trade programs and all other avenues of trade and non-trade leverage to protect our intellectual property.

## DUMPING

CBEMA members support strong remedies against the internationally recognized unfair trade practice known as dumping. Indeed, the United States antidumping law today is a powerful tool in the hands of domestic industries seeking relief, and that powerful tool is not diminished by the agreements reached in the Uruguay Round. Instead, U.S. negotiators in Geneva struck a careful balance between the interests of U.S. industries that use the antidumping law and the interests of U.S. exporting industries that are subject to unfair administrative practices in foreign antidumping investigations. That balance must be maintained in the implementing legislation; it can be maintained without any impairment of U.S. antidumping law. We urge the Congress to reject the calls of some who would "minimize" certain provisions of the new GATT agreement, or seek "compensation" for offsetting losses. In the final days of the GATT talks in Geneva, the U.S. negotiators succeeded in modifying the terms of the final Agreement to address the complaints registered by U.S. petitioning industries. Congress should now reject proposals that would destroy that balance; the implementing legislation needs to reflect the final provisions agreed to in December.

United States industries are frequent petitioners under the United States antidumping law. Hence the need to maintain a strong and viable dumping remedy. But United States exporting industries, taken in the aggregate, are also the largest single target of foreign antidumping authorities, underscoring the keen interest in the exporting community on the GATT results. The U.S. has succeeded in obtaining key reforms in procedural standards and transparency of the proceedings and definitions of key terms, such as "de minimis margins" and "negligible imports". These should operate to the benefit of U.S. exporters, reducing the instances of harassing foreign investigations.

But our trading partners will be looking to the United States as the source of model legislation implementing the new GATT Agreements, just as they have after previous GATT rounds. And if U.S. implementation legislation is pinched, overly narrow, or too smart by half in its efforts to avoid the reasonable effects of the GATT reforms, we can be assured that the implementation by our trading partners will be just the same. The United States exporting community cannot stand that result, and the United States petitioning industry community does not need that result to preserve their remedies.

In addition to balancing the interests of United States industries in the domestic market and in export markets, implementing legislation needs to take into account, and better balance, the interests of producing and consuming domestic industries. U.S. antidumping law is based on the premise that the antidumping relief, in the form of high import duties, will make foreign imports undesirable and send the domestic consuming industries back to the domestic producers for supplies. This system works quite well when there is a domestic producing industry capable of meeting the demand. But what happens when the domestic producers cannot meet demand?

The result is a windfall for the foreign producers that were found to be dumping. They are "forced" to charge higher prices to the domestic consuming industries, while U.S. producers cannot benefit because they are already operating at capacity and cannot supply the market. The losers are the domestic consuming industries, which not only have to pay higher costs for components, but now face higher cost requirements than their own foreign competition. As stated in the IPAC report, "the higher costs resulting from antidumping duties on imported products that cannot be obtained from U.S. sources have a serious adverse effect on the ability of U.S. industrial users to compete in world markets and may ultimately translate into a loss of U.S. jobs and investment."

This is why CBEMA is an ardent supporter of including a "short supply" provision in the final implementing legislation. Consistent with the new GATT agreements, which allow for a waiver of antidumping duties, a short supply system could be modeled on the system in place from 1989 to 1992 in connection with the steel voluntary restraint agreements. Thus it would not be strange or novel to provide for such a system in the legislation implementing this GATT agreement.

## CONCLUSION

We appreciate the continued interest of the Subcommittee in these issues. We look forward to working with the Congress and the Administration to implement this historic Agreement. Thank you Mr. Chairman.

Chairman GIBBONS. Good. Good.  
Mr. Waldmann.

**STATEMENT OF RAYMOND J. WALDMANN, CORPORATE DIRECTOR, FEDERAL AFFAIRS, THE BOEING CO., AND CHAIRMAN, INDUSTRY SECTOR ADVISORY COMMITTEE ON AEROSPACE, ON BEHALF OF THE AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC., ACCOMPANIED BY ROBERT E. ROBESON, JR., VICE PRESIDENT, CIVIL AVIATION, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.**

Mr. WALDMANN. Thank you, Mr. Chairman. I am Ray Waldmann, director of Federal Affairs for the Boeing Company, and I am accompanied today by Robert Robeson, vice president of the Aerospace Industry Association. We are here to support the results of the round. Both AIA and ISAC 1, which I also chair, are extremely pleased with the results.

These were difficult negotiations. The last 2 weeks in Geneva focused a great deal on the treatment of aerospace and aerospace issues, but Ambassador Kantor and his team were firm in their support of aerospace and we came out with a good result.

We have submitted ideas for implementing legislation in some detail in the ISAC 1 report, and AIA endorses those ideas.

I think it is important to point out that aerospace is going through a tremendous change. Last year was the largest decrease in sales in this industry in its history. We had a 10 percent drop in sales. We lost 131,000 jobs in this industry last year. This was not only in commercial products, but was spread over defense products as well.

Nevertheless, this industry is highly export-oriented and the international trading system is extremely important to us, and we expect over the next two decades to see substantial sales, particularly in civil aircraft. Our company estimates something on the order of \$800 billion to perhaps \$1 trillion of sales in the next two decades. Much of that, of course, will be exported.

Our industry's goals for the Uruguay round were substantially achieved. We retained coverage of civil aircraft under the Subsidies Code. We did not see any deterioration of the existing disciplines in aircraft, either in the Civil Aircraft Code or in the 1992 U.S.-EC bilateral agreement, and our industry is now going to be covered by the improved dispute settlement rules of the round. These are all three worthwhile objectives.

Our industry faces, as you well know, substantial subsidized competition from overseas, not just in commercial aircraft but in space launch vehicles, satellites, helicopters, general aviation, engines, equipment, air traffic control, every aspect of the industry.

The Subsidies Code strengthens international disciplines on subsidies. It broadens the country coverage. It expands the list of prohibited export subsidies. It has new rules on equity infusion. It states that certain domestic subsidies are presumed to distort trade. It has a clear definition of what constitutes a subsidy and has better notification requirements. It has new numerical tests, for determining the extent of a trade distortion. And finally, it has improved dispute settlement.



These are all significant changes and improvements. While, as other speakers have said, the results are not perfect, they are certainly better than the past disciplines on subsidies.

We believe that the implementing legislation gives us an opportunity to clarify U.S. understanding of certain of these provisions. We believe that one of those requirements will be effective monitoring and enforcement to make sure that we obtain what we bargained for.

The second major objective we had was not to see any dilution of the disciplines that are already in existence, and, of course, this was one of the EC's primary goals in the closing days of the round. They had urged a revision of the Aircraft Code that would have labeled all military R&D and military procurement as potential subsidies. Fortunately, this effort was thwarted in the closing days.

We have also completed 1½ years of efforts to multilateralize the U.S.-EC bilateral, and those efforts will continue for the next year as well. But Ambassador Kantor and his team were able to secure a provision which made sure that the United State's position with respect to these continuing negotiations would not be based on an unacceptable text put forward by the chairman of the Aircraft Committee.

Last, in the area of dispute settlement, we are pleased to see that the rules are stronger and that enforcement of the GATT agreements and provisions will be more expeditious. But we also note that the United States retains its legal authority to use section 301 and it also has avoided the efforts of other countries to secure a de novo review of U.S. antidumping and countervailing duty findings by the GATT. We think these are positive results from the perspective of our industry.

So in summary, Mr. Chairman, the AIA urges Congress to act this year to approve what we consider to be a very good Uruguay round agreement.

Thank you.

[The prepared statement follows:]

**STATEMENT OF RAYMOND J. WALDMANN  
ON BEHALF OF  
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.**

Mr. Chairman and members of the subcommittee:

Thank you for the opportunity to appear today to present the views of the aerospace industry on the recently completed Uruguay Round and the Agreement on Trade in Civil Aircraft.

I am Ray Waldmann, Chairman of the Industry Sector Advisory Committee on Aerospace (ISAC 1) and Corporate Director, Federal Affairs for the Boeing Company. I am testifying on behalf of the Aerospace Industries Association of America, which is the trade association representing the nation's leading manufacturers of aerospace products including aircraft, engines, and components.

The negotiations affecting this industry have taken place at a time of wrenching transition and sharply declining activity. The decline steepened appreciably in 1993. According to AIA's preliminary estimates, total industry sales were down by more than \$14 billion or 10 percent, the largest single year drop on record. Military sales are down, as might be expected, but the biggest decline among the various product categories is in civil aircraft.

The flow of new orders for aerospace systems fell off dramatically: almost \$24 billion below last year's level. And the total backlog, which peaked at \$241 billion only two years ago, stood at \$188 billion by the end of 1993 -- more than \$50 billion below the peak figure.

In 1993, our industry had to lay off 131,000 people. The total loss, since 1989, is 422,000 people -- 422,000 highly developed skills built up over years of training and experience. This was accompanied by lower outlays for plant and equipment and lower R&D expenditures. For 1994, AIA is projecting a further \$8 billion drop in total sales to a level of \$116 billion, with declines in all major product categories except for a slight increase in sales of space systems. The activity decline will force further layoffs of almost 50,000 people and reduce the labor force to 860,000, the lowest number since 1977.

We have also lost thousands of lower tier suppliers and we have been forced to shut down production lines, close research facilities and reduce capital expenditures. We will continue to lose a degree of capability through the gradual erosion that occurs with each increment of business decline.

After eight straight record-setting years, the industry's export sales declined by some \$8 billion to slightly more than \$37 billion, and the aerospace balance of trade was similarly down, to \$25 billion compared with the previous year's \$31.4 billion.

The decline notwithstanding, we consider the industry's foreign trade performance to be exceptional. The lower level of exports is by no means an indicator of declining competitiveness. It is rather a consequence of a shrinking global aerospace market due to extended recession in many of the world's foremost trading nations and in particular to the ailing financial health of most of the world's airlines.

For the industry as a whole we see an overall sales curve that will dip sharply for the next two or three years, then flatten out as commercial aircraft sales begin to pick up. The challenge is not just to survive, but to get to that time of bright promise in good technical and financial health, maintaining our existing capabilities to the extent possible.

Looking beyond the year 2000, the industry's prospects take on a brighter hue. On the commercial side, the airlines' need for new aircraft has not changed. They must, when they are financially able, replace thousands of older aircraft and, given the expected improvement in the global economy, air travel is projected to double by 2005 -- so the temporary overcapacity that now exists will give way to a big demand for new capacity.

The market for airline transport aircraft over the next two decades is variously estimated at \$800 billion to \$1 trillion, Boeing estimates that airline outlays for jetliners will, on an average annual basis, be more than double the

average for the last 20 years -- and that average was a very high level.

That market is a global market, a fact emphasized last week with the dramatic announcement of a Saudia Airlines deal worth over \$6 billion to U.S. aircraft manufacturers. The web of suppliers, customers and routes spans the world. Our business base depends on a healthy world economic climate in which business and leisure travel can thrive.

For all of these reasons, the prospects for long term growth fostered by an improved trading system are crucial for this industry.

#### INDUSTRY SUPPORT FOR THE FINAL ACT

The Aerospace Industries Association supports the recommendations of the Industry Sector Advisory Committee on Aerospace (ISAC 1). A copy of the ISAC report is attached for your reference. However, although the Uruguay Round is complete, further negotiations to improve disciplines in the aircraft sector may take place. Thus, our position must be understood in this total context.

Industry representatives provided unified support to the U.S. negotiators in Geneva. Industry CEO's provided coordinated advice to Congress and the Administration, including President Clinton and Ambassador Kantor. These were difficult negotiations in which significant and harmful concessions were sought from our industry. However, after listening to our advice, our negotiators supported the U.S. aerospace industry on issues of vital importance to us. AIA commends Ambassador Kantor in particular for his leadership and toughness in the final hours of the negotiations.

In general the aerospace industry is pleased with the results of the Uruguay Round. Our major objectives were achieved in the final agreement. In important provisions, the final agreement should provide more effective discipline on unfair foreign subsidies.

#### SUBSIDIZATION BY FOREIGN GOVERNMENTS

Of all of the issues under negotiation in Geneva, the most important for the aerospace industry concerned the Agreement on Subsidies and Countervailing Measures and the Agreement on Trade in Civil Aircraft. These addressed issues of subsidies and other forms of government support in the civil aircraft sector.

Government subsidization of industries competing with U.S. firms imposes a heavy competitive burden on the U.S. aerospace industry and can adversely affect its long term viability. The aerospace industry is characterized by heavy investment requirements and by long lead times before first deliveries. The period from first deliveries to recoupment of all program development costs can exceed 10 years. Additional costs are incurred through continuous efforts to improve the safety and efficiency of aerospace products.

In civil aerospace, production runs are relatively small, and fixed costs must be allocated over a limited number of units. High fixed and variable costs result in very expensive products. The price-sensitive market is highly niche-oriented, with some niches only able to support two-or even one-producers.

The presence of subsidized foreign competitors magnifies the high risk faced by unsubsidized U.S. firms. A subsidized firm can:

- o launch a program for which the market has not yet developed;
- o bring expensive new technologies to market even when the increased efficiencies do not warrant the costs of development and certification;
- o build and maintain facilities and production runs in the absence of orders;



- o pursue a strategy of gaining market share without regard to cost.

For the unsubsidized firms, this can result in reduced market share, lower or no profits, inability to raise capital for new programs, loss of technological leadership, loss of skilled and highly paid employees, and eventually a decision to exit the market.

Today, the U.S. industry faces subsidized competition at all levels of activity: commercial space launchers and satellites; transport and general aviation airframes; helicopters; engines; systems; components; and ground-based air traffic control equipment. The situation will be complicated even further with the transition of non-market economies, some of which have highly developed aerospace sectors, into the global market-based economic system.

#### AEROSPACE INDUSTRY OBJECTIVES IN THE URUGUAY ROUND

The U.S. aerospace industry had three main objectives in these negotiations -- all of which were achieved:

1. Continued coverage of civil aviation products under the Agreement on Subsidies and Countervailing Measures and strengthened disciplines under that Agreement;
2. No revision of the existing GATT Agreement on Trade in Civil Aircraft on the basis of a late-November proposal by the chairman of the GATT Civil Aircraft Committee.
3. Coverage under the enhanced multilateral dispute settlement procedures.

These remain basic industry objectives for any future negotiations.

#### The Agreement on Subsidies and Countervailing Measures

The industry is pleased that all civil aircraft products, including engines, helicopters and parts and components, will continue to be subject to the highest level of international discipline on subsidies for all industries. This agreement contains provisions which strengthen and improve discipline on subsidies through:

- o Broader country coverage;
- o Expansion of the list of prohibited export subsidies;
- o Rules on equity infusions;
- o Agreement that certain domestic subsidies are presumed to distort trade;
- o Clearer definitions and notification requirements which should result in increased transparency;
- o New numerical tests for defining trade distorting subsidization;
- o Improved dispute settlement procedures.

The European Union has long sought to exclude civil aircraft from coverage under the Agreement on Subsidies and Countervailing Measures and the disciplines that it provides for all sectors. EU efforts in Geneva were focused on making the GATT Aircraft Committee the sole arbiter of subsidies rules for civil aircraft.

Unfortunately, the GATT Civil Aircraft Committee is unrepresentative of the full GATT. Accession to the GATT Agreement on Trade in Civil Aircraft is voluntary, and there are GATT members which produce civil aviation products but

are not signatories to that Agreement.

The U.S. aerospace industry continues to insist that civil aircraft must be subject to the same subsidy rules, interpretations and dispute settlement processes that apply to all other industrial products. We believe that the Uruguay Round Final Act is clear on this point, and that the proper venue to any further negotiations on subsidy issues concerning this industry is in the GATT Committee on Subsidies and Countervailing Measures.

#### The GATT Agreement on Trade In Civil Aircraft

The second key objective of the U.S. aerospace industry was met in that there has been no agreement to establish separate subsidy provisions which could have disadvantaged this vitally important industry and its 900,000 workers. This concern was heightened with the late introduction of a controversial proposal by the Chairman of the GATT Civil Aircraft Committee. The European Union attempted to link renegotiation of the GATT Agreement on Trade in Civil Aircraft to the conclusion of the Uruguay Round itself. The 45 page proposal by the chairman was first seen by industry on November 18, 1993.

It was clear that this draft was and remains fatally flawed from a U.S. industry perspective. If adopted, it would effectively have removed this industry from coverage under the Agreement on Subsidies and Countervailing Measures, in favor of separate rules intended to weaken disciplines over production and development subsidies -- such as are common in Europe -- while restricting the kinds of basic precompetitive research and development activities that are common in the United States. Industry was joined in opposition to this text by Members of Congress and by our workforce.

While the conclusion of the Uruguay Round did not include a revised GATT Agreement on Trade in Civil Aircraft, there was a statement of intent to continue to negotiate on issues pertaining to that Agreement for one year. As a result, the GATT Civil Aircraft Committee may consider proposals to improve the existing Civil Aircraft Agreement over the course of the next year.

The U.S. industry accepted this statement on the explicit understanding with the Administration that the U.S. government position would be based on proposals other than the "Chairman's draft." Therefore the industry is committed to working with the Administration to develop negotiating objectives and strategies. The Administration should negotiate only on the basis of proposals which have been thoroughly discussed with industry and are acceptable to it.

The bottom line is that the industry will vigorously oppose any proposals which would weaken the disciplines contained in the Agreement on Subsidies and Countervailing Measures, the U.S.-EU bilateral agreement on large civil airframes and the current GATT Agreement on Trade in Civil Aircraft.

The Chairman's draft cannot fulfill these requirements. It would weaken disciplines on the direct subsidies provided in Europe. In addition, the Chairman's draft would create a new category of so-called "indirect subsidies" found no where else in the GATT and intended to specifically disadvantage the U.S. aircraft industry. The intent of these proposals is to label as "subsidies" military R&D and procurement used for the legitimate purpose of national defense, as well as basic precompetitive research such as that conducted by NASA. This must be resisted by the United States. If a subsidy arises from such activities, it can be addressed through the Agreement on Subsidies and Countervailing Measures. The European proposals go much further and could actually penalize a company merely for doing business with the government.

The issue of subsidies should be left in the Agreement on Subsidies and Countervailing Measures, where it belongs. The industry does not support any attempt to create an ersatz set of subsidies disciplines in a new Agreement on Trade in Civil Aircraft, particularly when the purpose of such disciplines is an frontal attack on the U.S. aerospace industry.

The conclusion of the Uruguay Round also leaves undisturbed the July 1992 U.S.-EU bilateral agreement on large civil airframes. This U.S.-EU agreement is in addition to international obligations under the GATT as between the U.S. and the EU with respect to the development and production of airframes with a capacity of 100 passengers and above. This agreement bans production supports and limits development supports to 33% of cost while requiring that they be repaid with interest. The U.S.-EU bilateral agreement addresses government support, not subsidies. The use of the term "supports" has its origins in the GATT Aircraft Agreement. It is an important distinction because it limits the extent to which the United Kingdom, France, Germany, Spain and the United States can provide assistance (i.e., supports) to producers of large civil aircraft even if that assistance is not found to constitute a subsidy. Therefore, the U.S.-EU bilateral agreement establishes obligations in addition to the subsidies disciplines contained in the GATT and the Agreement on Subsidies and Countervailing Measures. U.S. industry continues to support this agreement. However, we never envisioned this agreement -- or any expansion of it -- as a stand-alone agreement. It must be complimentary to and complemented by the Agreement on Subsidies and Countervailing Measures so as to ensure the broadest coverage of all forms of government support.

#### Dispute Settlement

Finally, access to the improved dispute settlement procedures has been a key objective of the U.S. aerospace industry. International obligations may now be enforced more expeditiously with this new mechanism. We are also encouraged that the United States will retain its legal authority to respond to unfair trade practices under section 301 of the Trade Act of 1974.

#### CONCLUSION

The Aerospace Industries Association urges Congress to pass legislation this year to implement the results of the Uruguay Round. As to further negotiations concerning trade in civil aircraft, AIA insists that, if such negotiations occur, there must be benefits to the U.S. industry beyond those contained in the Uruguay Round Final Act.



Chairman GIBBONS. Well, thank you.

Mr. Robeson, do you have a statement you would like to make?

Mr. ROBESON. No, I am just here in support of Mr. Waldmann. Thank you.

Chairman GIBBONS. OK. Thank you.

Ms. DePasse

**STATEMENT OF DERREL DEPASSE, VICE PRESIDENT, WORLDWIDE GOVERNMENT RELATIONS, VARIAN ASSOCIATES, INC., PALO ALTO, CALIF., ON BEHALF OF THE AMERICAN ELECTRONICS ASSOCIATION**

Ms. DEPASSE. Thank you, Mr. Chairman, and members of the committee, I am Derrel DePasse, vice president of Worldwide Government Relations for Varian Associates and also vice chairman of ISAC 5.

I am very pleased to be here today to present a statement on behalf of the American Electronics Association, which represents some 3,000 electronics companies around the country from virtually all sectors of the industry, from semiconductors and computers to telecommunications and analytical instruments.

We employ almost 2½ million workers in the United States. As I think you are aware, our industry is truly a global industry. It depends heavily on both exports and imports. About, on average, 25 percent of our industry revenues come from exports and in some cases, like my company, we are getting about 50 percent of our revenues from exports.

We believe that the Uruguay round trade agreements will significantly reduce trade barriers worldwide and improve international trade rules, and that is why the AEA is supporting prompt implementation of these agreements.

Elements of the agreements which will be particularly beneficial to our industry include significant tariff reductions on electronics products worldwide, strengthened intellectual property rights protection, improved customs procedures and provisions for rules of origin, and more transparent standards processes. These improvements will enable our industry to reduce costs and increase investment in R&D and in capital equipment and plants.

As I think you are also aware, negotiations are continuing in two areas of real significance to our industry and we urge the United States to vigorously press these areas. They are: Coverage of the European Union's Postal, Telephone, and Telegraph entities under the Government Procurement Code, and liberalization of telecommunication services.

While the AEA supports implementation of the GATT agreements, they do not solve all of our bilateral problems. For example, we still do not have full access to the Japanese market and it is absolutely imperative that we gain access to this market and that negotiations that are ongoing to try to make this happen be successfully concluded.

In addition, while the Uruguay round negotiators achieved progress on international dispute settlement, many areas impacting trade, such as anticompetitive business practices, are not covered by the international trading rules. We believe it is also critical that the United States retain full and effective use of market ac-

cess tools, such as section 301. This has proven to be an invaluable tool in gaining access to other markets.

In conclusion, to address some of these and other concerns that we have with the agreements on the GATT, we are suggesting that the implementing legislation contain five major elements.

First, we suggest the legislation provide authority to continue tariff negotiations with the aim of bringing electronics tariffs to zero.

Second, we propose the legislation spell out the objectives of the rules-of-origin negotiations that will be undertaken under GATT auspices, requiring the administration to consult with the private sector and to provide sufficient funding to enable full participation by the Customs Service.

Third, we suggest that the legislation assure the continued availability of a strong section 301 as a market-opening tool and that this section be applied to the enforcement of bilateral as well as multilateral agreements.

Fourth, we recommend that the legislation ensure careful monitoring of how countries implement intellectual property protection provisions of the GATT and provide for the appropriate response should abuses of these measures become apparent.

And, finally, we suggest that the legislation require the stationing of a trade official in Tokyo reporting directly to the U.S. Trade Representative. The purpose would be to assure that the USTR's mission of requiring adherence to trade agreements be facilitated with regard to Japan.

In conclusion, the AEA supports the overall GATT. We urge your prompt action on implementing legislation and we look forward to working with you and the Committee on helping to draft that implementing legislation.

Thank you.

[The prepared statement follows:]

STATEMENT OF MS. DERREL DEPASSE  
VICE PRESIDENT  
WORLDWIDE GOVERNMENTAL RELATIONS  
VARIAN ASSOCIATES, INC.

ON BEHALF OF THE  
AMERICAN ELECTRONICS ASSOCIATION

Good morning Mr. Chairman, members of the Committee, I am Derrel DePasse, Vice President of Worldwide Government Relations at Varian Associates, Inc. in Palo Alto, California.

I am pleased to be able to testify today on behalf of the American Electronics Association (AEA) on the agreements resulting from the Uruguay Round of multilateral trade negotiations. The AEA represents 3,000 American high technology companies involved in virtually all sectors of electronics, including semiconductors, computers, software, instruments, and telecommunications. Some three fourths of our members are small companies with less than 200 employees.

The electronics industry employs 2.3 million Americans. Even more importantly, our industry supplies the tools to many other industries to enable them to increase their global competitiveness.

Varian Associates is a \$1.3 billion diversified international electronics company that designs, manufactures, and markets high technology systems and components for applications in worldwide markets. Major product lines include: radiation equipment for cancer therapy and industrial inspection; analytical instruments for science and industry; wafer fabrication equipment for the semiconductor industry; and electron tubes, vacuum equipment and leak detectors for industrial and scientific process. Varian employs almost 8,000 people.

Trade is critical to the health of my company and to the entire U.S. electronics industry. My company exports nearly 50 percent of our U.S. production, as do many other AEA member companies. The U.S. electronics industry as a whole exports about 25 percent of total U.S. production. Electronics companies, including Varian, also import parts and components used in our production from all over the world. Many AEA companies, both large and small alike, export 50 percent or more of their total U.S. production.

#### Our Objectives

AEA has consistently sought a successful conclusion to the Uruguay Round negotiations. Our goals for the Uruguay Round were ambitious. We sought zero duties world wide for most electronics products. We advocated elimination of non-tariff barriers, expansion of existing codes, such as government procurement, and new discipline for areas not adequately covered by world trade rules, such as intellectual property protection and foreign direct investment.

The Uruguay Round agreements, when implemented, will reduce barriers world wide and improve international trade disciplines. We believe the U.S. electronics industry will benefit from the agreements and we urge Congress to promptly pass the implementing legislation.

While we support the results, it is important to note that the Uruguay Round was never intended as a panacea. There are important areas that impact trade, particularly anticompetitive business practices, that were not on the negotiating table.



While we favor elimination of trade barriers, we also seek to promote conditions of fair competition. Our industry is engaged in fierce global competition. We have learned that if a major competitor is able to operate from a closed home market, that the very survival of important segments of our industry can be threatened.

We believe that bilateral negotiations are also a critical element of U.S. trade policy, and represent a necessary parallel track to multilateral negotiations. For our industry, lack of full access to Japan's market is a major problem. Since the mid-1980's, our bilateral deficit with Japan in electronics has hovered around \$20 billion. It has been impervious to currency rate changes.

Many barriers limiting our ability to compete in the Japan market have not been on the table in Geneva, and the Uruguay Round will do little to reduce our electronics trade deficit with that country. Accordingly, we applaud the Clinton Administration's focus on addressing our bilateral trade problems with Japan in tandem with multilateral efforts.

I would like to comment briefly on the elements of the Uruguay Round agreements that will benefit the electronics industry, note several critical areas that are still under negotiation, and finally outline some areas that we think need to be addressed in the implementing legislation.

#### Important Elements of the Uruguay Round

**Tariffs:** Our industry is committed to reducing costs to the consumer, and to continually improving our technology. We believe elimination of duties on a multilateral basis can be an important means to help achieve these goals, since the savings from duty repeal can be passed on to the consumer, or used to invest in new product development.

We support the agreement by the major trade nations to eliminate tariffs on semiconductor equipment and medical equipment. We are also pleased with the outcome on copier parts and accessories.

While we would have liked deeper cuts in other areas, such as semiconductors, computers, computer parts and peripherals, printed wiring boards, satellite earth stations, analytical and test equipment, the significant tariff reductions agreed to will benefit the U.S. electronics industry.

**Intellectual Property Protection:** The Uruguay Round agreements on Trade-Related aspects of Intellectual Property Rights (TRIPs) commits signatory countries for the first time to certain obligations regarding intellectual property rights protection, and this represents an important achievement. Among other things, computer programs and databases will be protected under copyright; protection of layout designs of integrated circuits will be recognized; and procedures for resolving disputes will be improved. Although the TRIPs agreement lacks some of the positive features of the intellectual property provisions in the NAFTA, it is nevertheless an important achievement, providing that all nations live up to their negotiated commitments.

**Customs:** Important progress has been achieved in customs procedures, such as preshipment inspection and rules of origin. These barriers traditionally represent a significant added cost and nuisance to firms in international trade.

Preshipment inspection is relied upon by some developing countries to verify the quality, quantity or price of imports. Often it has been used to force exporters to renegotiate terms of sales, causing delays in shipments and other problems. The agreement on preshipment inspection will eliminate these unjustified obstructions of export transactions.

Rules of origin have been used to block trade in electronics products. Even when they are not used as a trade barrier, differing rules of origin have the effect of substantially increasing the costs of trade, as companies need to track inventory and complete unnecessary customs forms. The agreement will launch a three year work program to harmonize nonpreferential origin rules in the Customs Cooperation Council.

#### Need for Success in Elements Still Being Negotiated

Negotiations will continue in several areas of importance to the electronics industry. We are particularly concerned that the procurement and services negotiations produce substantive results. Additionally, it is vital that the maximum number of countries, particularly developing countries, sign on to the Uruguay Round agreements and implement its provisions in a timely and comprehensive way.

One of our major objectives in these negotiations has been to gain coverage under the **government procurement code** of the EU Postal, Telephone, and Telegraph ("PTT") government-owned monopolies. To date the EU has refused to offer meaningful procurement commitments on the part of its PTT's, and in response the U.S. has not committed to coverage of its sub-central and government-owned utilities.

Negotiations on government procurement code coverage will continue until April 15. U.S. negotiators must make successful resolution of these negotiations a top priority.

While coverage of the PTT's is our principal objective in these code negotiations, some important results have been achieved in government procurement to date. Coverage of the government procurement code has been extended to services, offsets will now be prohibited, additional countries (notably Korea, Israel and Hong Kong) have signed on, and a national bid challenge system has been added.

In addition to the EU, the U.S. is negotiating with Japan under the Framework talks to gain meaningful access to government procurement of telecommunications and medical equipment in that market.

Another major industry objective has been **liberalization of telecommunications equipment and services** markets. We regret that our trade partners would not to commit to open their markets in the Uruguay Round. Given this situation, however, we support the extension of negotiations until April 1996. We believe it imperative that the U.S. not in any way unilaterally open our market to foreign competition until these negotiations are successfully completed.

Some key objectives in these negotiations should be to ensure unlimited market access, independent regulatory institutions with fair and transparent procedures, safeguards between monopoly and competitive market segments, and cost oriented pricing around the world.

### Continued Negotiations

As we have noted, we are disappointed that it was not possible to obtain duty elimination for electronics broadly, particularly with regard to duties maintained by the European Union on semiconductors, printed wiring boards, computers, analytical, test and measurement equipment. Accordingly, we believe implementing legislation needs to contain authority for continued tariff negotiations.

Additionally, as a result of the rules of origin agreement, negotiations will be undertaken under GATT auspices to harmonize nonpreferential origin rules in the Customs Cooperation Council (CCC). The outcome of these negotiations could be very beneficial to the U.S. electronics industry or very damaging. Some customs officials, particularly in Europe, seek rules that rely on value-added and processing criteria that would impose a costly administrative burden on companies.

We believe it critical that Congress **spell out the objectives of the rules of origin negotiations**, require the Administration to consult with the private sector advisory groups, and provide sufficient funding to enable full participation by the Customs service. We believe a key U.S. objective should be that the criterion of substantial transformation should be based on a change in tariff classification approach to the greatest extent possible. (Other important objectives are contained in ISAC 5's report to Congress.)

### Need for Strong Section 301

The Uruguay Round agreements make important improvements in the GATT dispute settlement process. A single dispute resolution procedure will apply to all multilateral agreements on trade in goods, to TRIPs and to GATS. Time deadlines, improved enforcement mechanism, and measures to ensure higher quality panel reports are among the highlights of this new system.

However, there are many important gaps in dispute settlement coverage. For example, application to the plurilateral agreements, such as government procurement, is not clear. More importantly, some major areas impacting trade, such as competition policy, are not covered by international discipline.

While the AEA recognizes that an improved dispute settlement process was a key U.S. negotiating objective, we are concerned that many of our trading partners now believe that its adoption will prohibit the United States from using key market access tools, such as Section 301, should the need arise.

Section 301 has proven to be a highly effective market opening tool - a significant element of U.S. efforts to pry open the Brazilian and Korean electronics markets, for example. The effectiveness of the statute has depended on the willingness of the U.S. to take the necessary steps to ensure that our rights are not violated. It is essential that the U.S. retain its ability to utilize this important tool, and we urge the Congress and the Administration to address this matter in the implementing legislation.



### Other Elements of Implementing Legislation

As you know, there are differences of opinion in the electronics industry as to how U.S. **antidumping** law should be crafted. However, all segments of our industry agree that U.S. antidumping law must continue to be effective in dealing with injurious dumping. In crafting U.S. implementing legislation, we urge Congress to keep in mind that other countries will almost certainly emulate U.S. laws and practices.

As noted earlier, the TRIPs agreement has the potential to improve intellectual property rights protection in key markets around the world- provided that countries implement their negotiated commitments in a manner consistent with the letter and spirit of the accord. The implementing legislation should include language to ensure careful monitoring of how countries implement certain key provisions, such as those involving compulsory licensing and border measures, and to provide for an appropriate response should abuses of these measures become apparent.

Our ability to resolve bilateral trade problems with Japan needs to be improved. The U.S. Trade Representative's Office currently has a senior official in Brussels to advance U.S. commercial interests in the EU, but no one in Japan. However, Japan is now the second largest single country economy. The electronics industry, as well as many other sectors, have had serious and on-going difficulties in gaining access to the Japanese market. In spite of the fact that we have more than 19 separate bilateral agreements with Japan, our market share has not increased and is far short of our demonstrated ability in other markets.

Accordingly, we support the Administration's results oriented approach and applaud the President for not signing a cosmetic agreement with Japan. We further believe that bilateral electronics agreements with Japan must be implemented. Consequently, we believe that the implementing legislation should require stationing a senior official in Tokyo to report directly to the U.S. Trade Representative. This official should aggressively ensure that the Japanese live up to the spirit as well as the letter of multilateral and bilateral agreements.

Chairman GIBBONS. Well, thank you.

Let me say not only to this panel but to anyone who can hear me, we want your direct participation with our staff, with us, as we proceed on this drafting chore that we have ahead of us. We realize that you possess a great amount of knowledge and we want to take full advantage of it. If there is any limitation placed upon you, I want you to let me know about it. I am in every phonebook every place I am so you can get me any time, and I welcome your contact.

Let me ask something that none of you testified to but I think you are all aware of. Senator Danforth issued a statement about subsidies. What I read greatly disturbed me, and I want to know what you all think about it. I don't ask you to criticize Mr. Danforth directly, but I was kind of worried by his statement.

Are we off on a course of action that may get us into greater problems? What should we guard against? Can you all talk about that for a while?

Mr. SCALISE. Let me make one brief comment; perhaps the others will have suggestions as well.

Obviously, the whole issue of subsidies is a difficult one to come to grips with, but if I were to lay a cornerstone to build any initiative there, it would be to encourage strict adherence to the requirement that government assistance must be precompetitive. I think if we are able to deal with that, the rest of the issue I think can fall into line. Not that they will fall into line easily, but that should be the cornerstone I think on which the proposal should be based.

Chairman GIBBONS. You say precompetitive.

Mr. SCALISE. Precompetitive so that it becomes an enabling capability, really. And if you look at the kinds of things we are doing here in the United States that are being very successful and as a consequence are creating a more competitive industry as well as more competition within the industry, that is essentially how it is working. So that would be my primary recommendation.

Chairman GIBBONS. Where do you draw that line? Go ahead.

Mr. SCALISE. Well, I think perhaps with drawing it in different places, given the technology or the kind of industry you are involved with. I can speak best to semiconductors. If you look at basic process capability or basic hardware that needs to be evaluated to implement processing capability, these things build a framework for an industry. You then take that capability and you then define, design and bring to market those products that use that enabling technology.

So that is very precompetitive. It does not get into the marketplace, it does not get into picking winners and losers, it allows for all of the vagaries associated with an R&D program.

Chairman GIBBONS. Is that kind of information generally available to the public and to our foreign competitors, or is it very proprietary and held very closely?

Mr. SCALISE. It works both ways. I think if you look at it from the standpoint of that portion of the work that is done at universities, and a large part of it is, that gets disseminated rather quickly through the student population and the papers that are generated and so on. So that moves out fairly fast and has no limitations.

If you look at those that are associated with a consortia or a CRADA, for example, where you have a cooperative research development agreement with one of the national labs, that will get held a little closer early on but eventually gets disseminated as well. So perhaps those would make the investment gain the benefit a little earlier than some of the others who were not a part of that investment program, but eventually it moves all out to the marketplace.

So I think there are different elements to it. But in the final analysis, I think it enhances capability, it enhances competitiveness and has been very effective where it has been used well.

Chairman GIBBONS. Mr. Waldmann, you had a comment.

Mr. WALDMANN. I was going to say we agree with Mr. Scalise. His basic point is that we do not want to see this country, specifically for aerospace, providing the kinds of development subsidies that we face overseas, particularly in Europe but in other countries as well.

We have taken the position that research should be open to 100 percent funding by government agencies, but that when you get to the line between precompetitive products, testing and prototypes on the one side, and you get into a development of a commercial product on the other, that is a line you should not cross.

The drafters of the GATT attempted to deal with this by stopping at a prototype, but even in that case we think that is a little dangerous and that is one of the reasons why in the closing days of the round, we continued the exclusion of aerospace or civil aircraft from that provision, because it would pose problems for us. And we also have a fairly good definition of what constitutes development of civil aircraft in the U.S.-EC bilateral. We did not want to compromise that definition.

So, in our case, we have some very special concerns here and also a different agreement, I think, from the rest of U.S. industry. Civil aircraft is the only industry subject to this U.S.-EC bilateral. It does not apply to any other sector.

Mr. TASKER. Mr. Chairman, may I add a couple of comments?

Chairman GIBBONS. Yes, please.

Mr. TASKER. There is a little bit of confusion here perhaps in Senator Danforth's comments about does this signal some sort of new industrial policy. It does not, in our view. This is nothing new. The green lining of the precompetitive research and development subsidies, we think, is something that—well, first of all, is this kind of work by the U.S. Government that has gone on through many administrations and for a long time. So it is not something that is new and different.

The precompetitive nature of the research is something that we do not think should have been a problem under the GATT Subsidies Code, and the question was raised as, well, gee, maybe it is a problem. So if it might be a problem, then let's fix it. But we are talking about such things as the SEMATEC, the great semiconductor consortia that Mr. Scalise can speak to in greater detail than I can, that has government funding as a piece of it and that is clearly precompetitive research. We are talking about those kinds of activities that were of concern and those are activities that are nowhere close to the marketplace.



So I do not think there is anything new or especially dangerous going on here.

Ms. DEPASSE. I would add one more point, that the AEA supports the subsidies text as written and we believe that it does strike a balance between the need to support precompetitive research, and at the same time attacking production subsidies.

I want to add also one other point of caution here. In a previous round, the Tokyo round, where the government procurement agreement was later opened up and changed, our industry actually lost more ground. In exchange for providing for small business set-asides, we were forced to give up coverage of the PTTs, which was hurtful to our industry's interest.

So I think we would prefer not to see any further changes of this code and to accept the text as written.

Chairman GIBBONS. Fine.

Bill.

Mr. THOMAS. Continuing the line that the Chairman started, there are some other things I want to focus on, but I am a little concerned about how the Europeans might define precompetition and how we define precompetition. In so many areas they maximally pursue the subsidy structure and we tend to minimally pursue it, and I am now having some difficulty understanding.

For example, in high-definition television, I think it is entirely appropriate for a government and industry to pursue and perfect basic architectural-like digital versus analog design. That to me makes all kinds of sense because of its broad emphasis.

Is that what you are talking about? What I heard was actual machinery and that basically the private sector deals with marketing and distribution, and if you shove it that far up the precompetitive chain, I think the aerospace industry is smart in getting that Airbus and other stuff out from under the structure.

I need some comfort level that you folks think that we are going to be as clever with the wording as the Europeans are, or probably more so the Japanese, on how you deal with precompetitive. And are you counting on those U.S. sanctioning tools to make sure that we can keep them in our definition of precompetitive?

Mr. SCALISE. Well, I think there is always going to be a gray area here that is going to require some tugging and pulling at, but I think in large part, the issue of precompetitive and the enabling technologies that encompass precompetitive are fairly well defined. You really do not get into the commercialization arena. You are a couple of steps removed from commercialization. So you are talking about basic research, you are talking about applied research in some specific areas, but you do not get too far into applied because then you begin to spill over into the commercialization area.

So it is something that I think, you know, it is the old "looks like a duck and quacks like a duck" kind of issue, and I think that most of us that are dealing with it have a pretty good definition. If it is on the side of the competition that it is beginning to infringe, or is it how far we should be allowed to go.

Mr. THOMAS. Mr. Scalise, do you feel comfortable with your ability on a transparency basis to look into these countries and with various proprietary rights being protected determine that that line is being followed?

Mr. SCALISE. I think so. Again, there may be areas where this is not true. As I see it from our industry, I think we can feel pretty comfortable we could deal with that very effectively, yes.

Mr. THOMAS. OK.

Mr. SCALISE. The other thing about this that is important as we begin through this transition of moving beyond the cold war era in trying to figure out how to deal with the national labs, I think using the national labs effectively going forward is going to get into this area to a very large degree, an enlightened approach that is going to be important for us.

Mr. THOMAS. Mr. Tasker, I agree with you, finding some countries running counterfeit printing presses and giving them 4 years beyond 1996 to shut down the press is just outrageous, but I guess that is what happens when you have to get everybody together at the table.

Ms. DePasse, I appreciate your suggestion of the USTR agent in Japan. Frankly, given the very small size of the USTR, I am amazed at the professional job they continue to do, and we will continue to review their structure and their ability to do the job.

We have, in part, on our own, kind of fundamentally assessed the United States versus other countries in the way in which we deal with trade internally in the National Government, and I continue to have some concern about the separation and jurisdiction between the Department of Commerce, the U.S. Trade Representative, their relationship to the Department of State and the Presidency, and that by concluding this round of GATT, I think it will do us all good to sit down and rethink and rediscuss the relationships internally, getting ready for the next round.

Because, frankly, I think our structure sometimes puts us at a disadvantage. We have quality people, but I think the way in which we deal with it internally, the least of which was, Mr. Scalise, your folks' ability to finally communicate to these people as late as the eleventh hour in Geneva, some adjustments that needed to be made. We should not have to operate that way. Other systems do not.

I look forward to any help you can give us in that regard from your experience, and how, as we make our tools and our tool chest GATT legal, that we, if possible, enhance them rather than diminish them. Because I am afraid we will get some folks that just want to back down from these tools and I want to make them GATT legal but do not want to diminish their effectiveness. I look forward to continuing to work with you in that regard as well.

Thank you for your testimony. And thank you, Mr. Chairman.

Chairman GIBBONS. Mrs. Johnson.

Mrs. JOHNSON. Thank you, Mr. Chairman.

I appreciate your discussion of the issue of subsidies, Mr. Scalise and Mr. Waldmann. I think just as we have tried to develop a clear understanding of what is the Federal role versus the State role and the private role in research and development in this country, I think we have to begin to force that discussion worldwide. There is a role for all governments in promoting basic research that is beyond the capability of a single company, but we do have to differentiate between that level of subsidy and subsidizing ventures that then compete with other private ventures.

I would like to change the discussion a bit, though. I have long been concerned with the issue of dumping of foreign products in our market, and while it appeared at first that we had really achieved our objectives in the negotiations in Geneva in regard to the antidumping sections of the code, I am now receiving a very mixed comment on that issue.

Do you think the code, as it is proposed to us, protects our interests sufficiently in regard to antidumping provisions? Do you think the issue of dumped inputs is sufficiently addressed; diversionary dumping? Do you think the minimum standards are too high? What is your evaluation of the agreement, the antidumping provisions of the GATT?

Mr. SCALISE. Let me just say there are many issues here, obviously, and I would just take one, for example, startup costs, because we can really get into dumping.

Oftentimes startup costs become one of the centerpieces for how you determine whether or not dumping has occurred. There needs to be a definition that we can all agree to and I think this one will have some problems associated with it, but certainly by the time a product becomes a commercial product and is truly in the marketplace and has enjoyed—and this varies, I know, from industry to industry—but has enjoyed the opportunity to recoup some of its initial cost and has gained some of the ability to reduce costs through volume, then there is no question that it should no longer be considered as a startup cost and therefore the calculation is very easily defined. But that gray area there is one that will have to be defined, and this issue of commercialization is where that is going to have to take place.

I think that is less clear than some of the things we have talked about before relative to precompetitive arenas. I think that can be defined better but that is one area that will be very important if the law is going to be applied in an appropriate manner.

Mr. TASKER. I think that startup cost is a good example of such an area. We would also want to make sure that the startup period is long enough to be realistic, because it is a factor of the way the Commerce Department calculates number margins that is the question here, and how long those startup costs are amortized or taken into account, that can sometimes create an artificially high dumping margin if you are at the beginning of a production cycle.

Mrs. JOHNSON. What would your recommendations be in terms of length? You can get back to us on those specific things.

Mr. TASKER. I would like to get back to you with a specific recommendation on the amount of time there.

[The following was subsequently received:]



April 18, 1994

The Honorable Nancy L. Johnson  
United States House of Representatives  
343 Cannon House Office Building  
Washington DC 20515-0706

Dear Congresswoman Johnson:

The Computer and Business Equipment Manufacturers Association (CBEMA) commends the United States and the international trading community in its efforts to seek a fairer and more transparent antidumping code. We believe the U.S. negotiators in Geneva were able to successfully strike a careful balance that considers the interest of those U.S. industries who use the antidumping law, those downstream U.S. industries affected by dumping orders, and those U.S. exporting industries that are subject to arbitrary administrative practices in antidumping investigations by our trading partners.

For these reasons we believe that implementing language to be approved by Congress must provide a faithful and balanced interpretation of what was agreed upon in Geneva. To do otherwise could jeopardize implementation by our trading partners. We recommend that the following provisions negotiated and agreed to in the Uruguay Round Agreement, and supported by CBEMA, be faithfully adhered to in the implementing language:

- **Fair Comparison:** It is clear from the Agreement that in calculating dumping margins "a fair comparison should be made between the export price and the normal value". This means dumping calculations should be made on basis of average to average comparisons. This should be applied in both investigations and reviews.
- **Sunset:** The Agreement requires that a dumping order must be terminated no later than five years from its imposition unless the "authorities" determine in a review that discontinuing the order would cause a recurrence of dumping and injury. This automatic termination does not contemplate forcing respondents to justify the sunset.
- **De Minimis:** The Agreement provides that the standard for a de minimis dumping margin is two percent. This is a fair level, and therefore, should apply to both the investigations and administrative reviews. The language of the Agreement does not justify the application of different de minimis standards in initial investigations and investigations establishing definitive duties.
- **Constructed Value:** The Agreement makes it clear that using arbitrary figures for profit, and for general and administration expenses in constructed value calculations is now a violation of the GATT. Actual cost and profit data must be used when it is available. When such data is not available, these calculations must be based on other reasonable methods as outlined in the Agreement.
- **Standing:** The Agreement makes it clear that "standing will not be found unless the authorities have determined on the basis of an examination of the degree of support for,

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or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry." This is understood to represent "polling of the industry".

- **Start-up Costs:** Given the nature of the information technology industry, a six month commercial production period is a reasonable benchmark to use for determining start-up costs.
- **Exchange Rate Conversion:** CBEMA supports the more reasonable grace period of 90 days in which to adjust prices caused by currency fluctuations without unfair penalty in antidumping duty calculations. Moreover, antidumping calculations should reflect efforts by exporters to hedge exchange rate risk as provided in the Agreement. Exporters should not be penalized for short-term exchange rate fluctuations.
- **Standing of Users:** The Agreement states "The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality." We interpret this article to mean that industrial users and consumers should have the opportunity to provide information and other relevant materials to the U.S. International Trade Commission (ITC) and the Commerce Department. We believe it is implicit in this provision that the views of all users will be considered in any assessment of dumping and injury resulting from dumped imports. Implementing legislation should, therefore, provide that the ITC and the Commerce Department not only solicit from all users of the product under investigation, but also actively consider input through oral and written testimony in rendering decisions.
- **Short Supply:** The Agreement permits the authorities to impose only those duties needed to "remove the injury to the domestic industry." A short supply provision will permit the authorities to temporarily suspend dumping duties when a product is not produced in the U.S. and not available in adequate quantities. This will prevent situations where a U.S. company and the U.S. economy would be penalized by a dumping duty when they can not get the product from a U.S. company.

Unfortunately, there has been a growing trend within the United States to use the antidumping law as a punitive tool rather than a market adjustment mechanism. CBEMA is opposed to efforts to greatly expand U.S. antidumping law through implementing legislation. Provisions which CBEMA would oppose include:

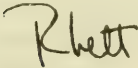
- **Anticircumvention:** Because negotiators were unable to agree on a text concerning anticircumvention there is no mention of circumvention in the Agreement. CBEMA opposes those currently proposed suggestions to address circumvention (and particularly "essential component" proposals) that go far beyond the spirit and intent of the GATT's negotiating goals of fairness and transparency. To expand the antidumping code to cover parts and components from an unrelated third country supplier would penalize fair trade. These proposed provisions would severely constrain the ability of CBEMA companies, who globally source, to choose suppliers, and would unfairly impose the burdens of a dumping order on those suppliers who were never involved in the initial antidumping investigation.
- **Compensation Fund:** CBEMA opposes the creation of an antidumping compensation fund that would reward petitioners for filing antidumping petitions. The Agreement

contains no authority for such a provision, and it would violate the terms and spirit of the GATT. Equally important would be the consequences of a compensation fund for the U.S. antidumping law. The U.S. antidumping law operates as a market regulatory mechanism, not as a penalty for wrongful conduct. The antidumping law appropriately provides its benefits by allowing injured domestic producers higher prices and greater market share. Creating a compensation fund would transform the antidumping law into a penalty mechanism. Moreover it would alter the incentives for filing an antidumping petition from seeking market relief to seeking a new source of revenues, thus inviting a blizzard of frivolous petitions, further overburdening both the ITC and Commerce Department. Such an administrative burden seems particularly unnecessary and counterproductive given the more than adequate legal remedies available under existing law.

- **Duty as a Cost:** CBEMA opposes any distortion of the Agreement's terms that would have the effect of mandating the deduction of antidumping duties paid from exporters' sales price (ESP). The Agreement directs the Commerce Department to calculate ESP "with no deduction" for antidumping duties "when conclusive evidence" of changes in normal value, costs and resale prices is presented. Some interests have argued that antidumping duties paid should be deducted in all ESP calculations, or that a presumption favoring deduction should be created in ESP situations. Deducting antidumping duties as a cost in ESP situations would prove counterproductive in practical and policy terms. This proposal could cause the Commerce Department to treat myriad, ordinary transactions between parent and subsidiary as duty reimbursements. CBEMA would object especially were foreign governments to adopt counterpart provisions. Such a provision could hinder significantly the international operations of multinational corporations, including those of CBEMA members. In addition, the actual payment of antidumping duties typically lags importation of the merchandise by several years, and sometimes by more than a decade. The level of imports, pricing of the imported product, and nature of the product itself can change dramatically over such a time lag. It thus makes no practical sense to assign to current imports a duty paid on products imported years earlier.
- **Deduction of Profits from ESP:** CBEMA opposes proposals to modify the calculation of ESP to require the deduction of profit. Such a provision would transform an "apples-to-apples" calculation into an "apples-to-oranges" comparison since a comparable deduction would not be made to normal value. It also could inhibit foreign investment, and thus job creation, in the United States by favoring arm's length exportation from the home country to avoid this ESP penalty.

Years of work on the part of U.S. negotiators have led us to this point. We look forward to working with you and your staff as this most important implementing legislation is developed.

Sincerely,



Rhett B. Dawson  
President

RBD/mbr



Mr. TASKER. In terms of whether the code protects our interests sufficiently, we would say absolutely yes. The U.S. dumping law system is a very powerful weapon in the hands of the domestic industry. It was before the code, it will be after the code. And we can talk a lot about—there are a lot of proposals out there now that say, well, we have weakened the law here and there.

I would urge you to really dig into some of those proposals a great deal, because in a prior life I used to do dumping cases for a living, and I have had my share of victories on behalf of domestic industries and it is a powerful weapon. Many of the proposals where we say we need to do better, we need to improve the law in this respect, they are ways to increase the margins, nothing more and nothing less.

Now, we are an exporting industry and we are a target. We get a lot out of the Dumping Code because we are subject to harassment. And we have talked about the U.S. antidumping law, well, we are subject to the dumping laws in the European Union, subject to the dumping laws in Latin America. The dumping law is a major exporter in the United States, just like the antitrust laws have been over the years. And, believe me, you can talk all you want about the U.S. antidumping law, but wait till you see what it is like to be involved in a Brazilian antidumping case. It gets to be pretty tough.

So the benefits are enormous to us in terms of transparency of proceedings, in terms of due process, in terms of fairness, and those are the issues that, to us, balance off some of the other issues that are in the final code agreements. And let me just say that we really wanted to make sure we do not load up the implementing legislation with a lot of amendments.

I guess I, for example, would differ slightly with my colleague, Mr. Scalise, on the issue of circumvention. We have a circumvention provision in the law today, and there are ways that we need to work on that, to tinker with it to maybe make it work a little better, those might be explored, but, at the same time, some of the proposals for dealing with anticircumvention take you down the road to a point where it would be impossible to tell the difference between an imported component that is from my company in Houston and an imported component that is for some alleged plant that has been put into some other place in the United States to build the product that is subject to antidumping duties.

Now, how do you tell whether I get the component or somebody else gets the component that should be subject to the duty on that component? It turns into something of a nightmare in the electronics industry. So we have to, we think we have to be very careful, and that is why I said very early on that we would be happy to work with you and your staff and other members of the committee to go through some of these things and bring them down from a level of abstraction, to a level of business reality.

We are, by the way, in favor of a strong dumping law. Don't let me be misunderstood in my comments. We just happen to think that the dumping law as it exists today is a very strong weapon and want to make sure we do not tip the scales too far in another direction just because we have the opportunity to do so.

Mr. WALDMANN. Congressman, we in the aerospace industry do not use the dumping laws as much as other sectors, so we paid more attention to the Subsidies Code than the Dumping Code. But just as a question of process, observing the last couple of weeks of the round, it was clear that the United States started out behind the eight ball with the Dunkel text of a couple of years ago and had to repair a lot of damage that was done in that text. I think they did a very good job in closing many of those loopholes.

Mrs. JOHNSON. I do agree that things fell apart in that regard, and I think that our team did an excellent job of presenting our case when that happened.

Thank you.

Thank you, Mr. Chairman. Thank you for your testimony, panel.

Chairman GIBBONS. Yes, well thank you.

I realize government time and industries vary all over the lot. Just looking at this table here I can see you have a great variation in startup time, and trying to have one rule that fits them all is going to be a very, very difficult thing. We just need your input and we will try to do a workmanlike job on the legislation.

Thank you very much.

Mr. SCALISE. Thank you.

Mr. TASKER. Thank you, Mr. Chairman.

Chairman GIBBONS. Well, Mr. Prestowitz is next, along with Mr. Hecker—Ms. Hecker, I am sorry. Excuse me, I was looking just at the last name. Clyde, we have you first, so go right ahead.

#### STATEMENT OF CLYDE V. PRESTOWITZ, PRESIDENT, ECONOMIC STRATEGY INSTITUTE

Mr. PRESTOWITZ. Thank you very much, Mr. Chairman. I will just make a brief statement.

We at the Economic Strategy Institute have followed the Uruguay round closely and with great interest from the beginning, and we were concerned at various points along the way with what the outcome was likely to be. In particular, when the so-called Dunkel draft was written, it frankly looked to us like a disaster for U.S. interests. We did some analysis and concluded that if the Dunkel draft were to become the basis of the Final Agreement, that it could actually increase U.S. trade deficit by as much as \$44 billion and lead to a reduction of two or three times that amount in U.S. GNP.

Fortunately, after the negotiations, as they took place from the summer until December 15, it is our view that Mickey Kantor and the administration managed to repair a great deal of the damage in Dunkel text. Our analysis of the Final Agreement is that, on balance, it is a positive agreement for the United States. We have calculated that it will increase U.S. exports by between \$13 and \$24 billion, and that it will lead to a significant increase in U.S. GNP.

We think, in particular, that provisions with regard to protection of intellectual property provisions, with regard to aerospace, tariffs, agriculture, are all very positive and will be beneficial to U.S. exporters and to the U.S. economy. We do, however, have some concerns, and Congresswoman Johnson touched on some of those in her questions.



We feel that while there are likely to be significant gains for the United States as a result of the Uruguay round agreement, it is still possible that those gains could be wiped out unless adequate attention is paid in the implementing legislation to shoring up some of the soft spots in the agreement. In particular, we are concerned with the area of dumping subsidies and unfair trade activities currently encompassed under section 301 of U.S. trade law.

With regard to subsidies, I feel that we got into a situation in which it is, as Mr. Scalise said, now going to be very, very important for us and for you in the implementing legislation to carefully define what is precompetitive, to try to draw up rules along those lines, and to look very carefully at the issue of regional subsidies and whether or not they are truly regional or whether, in fact, they are hidden subsidies to particular special interests.

I personally feel that our own scientific community became a little confused in the latter days of the negotiations, and fearing that the proposals then present in the text would hamper some of the things that the U.S. Government is doing or wants to do, acceded to very extravagant requests from the Europeans and from others.

I think we are now in a situation in which if we are not careful, subsidies could become a major detriment to U.S. interests and, therefore, it is important that you address that question in the implementing legislation.

Second, in the area of dumping, I agree very much with the comments of Mr. Waldmann. The dumping text, as it was contained in the Dunkel draft, would have eviscerated U.S. dumping laws.

In the latter days of the negotiations, the administration managed to salvage, I think, a workable antidumping regime for the United States. Nevertheless, it will still be easier to dump in the United States after the ratification of the present text than it is now. It will be more difficult for U.S. companies to bring antidumping cases in the future than it is now, and it will be more difficult to find dumping and to prove injury than it is now.

I agree that we will remain with a strong tool in the antidumping laws, but, again, there are things that I believe you need to pay attention to in the implementing legislation in order to assure that we have a tool that is workable, not only for big companies, but also for small companies.

In that regard, I think the question of startup costs; how calculations such as SG&A, settling general accounting, are handled; the question of the acceptability of foreign accounting data; what the United States can accept and what it does not have to accept; and the question of average pricing and the periods within which data can be collected and the average prices can be calculated are important.

All of those details are very important, and I urge you to look at them carefully and to amend the legislation as appropriate.

Finally, with regard to section 301, as you know, one of the weaknesses of the Uruguay round was that it did not really address many of the most pressing issues in international trade, issues such as anticompetitive practices, administrative guidance, controlled distribution systems, and quasicartelized industries or very close relationships between governments and their industries. All of these are really not addressed in the Uruguay round.



At the moment, those issues or those problems arising as a result of those kinds of regimes can be addressed under section 301. A potential difficulty arises in the future, however, in that the language of the current Uruguay round text indicates that disputes with regard to any of the objectives of the GATT will have to be submitted to the new World Trade Organization for resolution. The difficulty is that the new World Trade Organization has no rules to handle some of these disputes.

If you are in dispute with a foreign company or a foreign government over its industrial policies or over the fact that cartels are controlling particular markets, and if you appeal that dispute to the GATT, it is not clear that the GATT can make any finding at all because there is no GATT rule.

But then if you—in getting no answer from the World Trade Organization—decide to proceed unilaterally to take some measures to prevent damage to your own industry, it may very well be that the measures you take to impose a tariff, a countervailing duty, or a quota of some sort, which are trade measures, your trading partner may then take you to the World Trade Organization arguing that you have violated your GATT commitments on bound tariffs or on liberalizing quotas and the GATT will find you guilty.

So I think it is very important for the Congress, in the implementing legislation, to address the question very carefully and to spell out carefully the U.S. Congress' understanding of the World Trade Organization's dispute resolution mechanism, and to spell out very carefully the U.S. Congress' understanding of what is covered and what is not covered; what we feel is bound to take to the GATT and what we feel does not have to go to the GATT. Second, the Congress must spell out very carefully what kinds of actions we think are GATT legal and what kinds of actions we think are GATT illegal.

I would also urge you to consider amending section 301 so that it would contain provisions for reaction to unfair trade activities that are not necessarily trade measures. In other words, you might want to include an antitrust provision in section 301 and enable the leveling of fines or the collecting of treble damages rather than the imposition of tariffs or quotas as a way of responding to unfair trade activity in ways that would be GATT legal.

But with those provisos and providing that the Congress takes adequate care to spell out its understandings to strengthen the legislation in the implementing bill, I think that, on balance, the Uruguay round has come to a good conclusion and it should go forward.

[The prepared statement and attachment follow:]

## "The Economic Impact of the Uruguay Round Agreement"

February 22, 1994

House Ways and Means Committee

Testimony of

Clyde V. Prestowitz

President, Economic Strategy Institute

### I. Introduction

Since its founding in 1990, the Economic Strategy Institute has closely followed the Uruguay Round negotiations and has issued numerous reports on the talk's likely effects. These publications include *Read My Stats*, first released on October 23, 1990, ESI's analysis of the Bush administration's projected gains from a successful completion of the Uruguay Round. It argued that the Bush administration's figures overstated the case for its own preferred agreement. In "A Critical Analysis of the Uruguay Round" ESI published an assessment of the Dunkel draft (produced by former GATT Director General Sir Arthur Dunkel) in which we reached the conclusion that the United States should not accept the Dunkel Draft because it contained many provisions that would have damaged the U.S. economy. Specifically, we concluded that the United States might suffer losses as large as \$44 billion in manufacturing industries due to the elimination of the Multifiber Arrangement, the elimination of Section 301 of U.S. trade law, and losses in tariffs and subsidies. Annual GDP losses would be even higher if potential losses in intellectual property rights were added. In addition, we were concerned that the Dunkel Draft would limit the ability of the United States to fight dumping, unfair subsidies, and limit the use of countervailing duties, in addition to resulting in major losses for the textile, apparel and aircraft industries, and industries that depended upon strong protections for intellectual property rights.

After six years of discussions, world trade negotiators reached a final agreement on December 15, 1993 (called the Final Act). This agreement will have profound implications for the U.S. economy. Although some provisions appear to be beneficial, others are more difficult to interpret. In order to make an overall assessment of the agreement and to pinpoint the main areas where responses by the Congress and the administration in the implementing legislation might be necessary, the Economic Strategy Institute (ESI) has prepared a quantitative evaluation of the major provisions of the Final Act. My testimony today is based on this evaluation.

As was the case with the ESI evaluation of the Dunkel Draft, ESI based this latest Uruguay Round analysis on a "bottoms-up" approach that evaluates how each major part of the Final Act will affect key U.S. industries, the U.S. trade balance, and the U.S. economy as a whole. This approach differs from the computable general equilibrium (CGE) models employed by several other analysts. We eschewed the use of CGE models because we sought to measure the impact of changes made between the Dunkel Draft's release and the approval of Final Act in December, 1993. These models tend to present similar results regardless of the contents of trade agreements, because it is difficult for them to model the impact of specific industry provisions and issues. In addition, CGE models utilize simplifying assumptions, including full employment, perfect competition, and static capital and labor markets, that do not reflect international economic and business realities.

Quantitative estimates of the impact of a proposal as complicated and far reaching as the Final Act are difficult to make and subject to large potential errors. Nevertheless, the ESI approach can generate estimates that, although rough, are more reliable than those produced by the CGE models and, thus, can be useful in comparing the Final Act with both the status quo and the Dunkel Draft. Our analysis, therefore, will indicate what changed and the economic impacts of these changes.

## II. Economic Impact

ESI believes the Final Act of the Uruguay Round negotiations is a vast improvement over the Dunkel Draft agreement that had been the basis for negotiations. Negotiators made several important changes to the Dunkel Draft text that improve the chances that the Final Act will be helpful to the U.S. economy.

These include:

- 1) European agreement to forego "grandfathering" of the European Airbus subsidies, to have aircraft subsidies covered under the Subsidies Code, and to remove the coverage of military subsidies from the Final Act;
- 2) The facilitation of U.S. actions against unfair subsidies for aircraft and aircraft parts;
- 3) A change in the principle for MFN treatment in services so that it does not have to be extended to nations that fail to open their own markets for services;
- 4) Important reductions in tariffs on high technology products by the European Union and South Korea;
- 5) The removal of the compulsory licensing requirement for intellectual property that had been included in the GATT TRIPs Code;
- 6) Insuring that regional subsidies were non-actionable only if they were limited to nonspecific industries;
- 7) Inclusion of a standard of review for GATT panels for antidumping, clarification of the sunset provision so that existing orders get 5 years to be implemented, clarification of the standing provisions, and incorporation of the U.S. practice of circumventing in estimating antidumping; and
- 8) Reductions in paper tariffs that will be implemented over a shorter period.
- 9) Additional tariff reductions on other products.

ESI's analysis of specific provisions in the Final Act finds that those provisions whose impact we can measure will improve the U.S. trade deficit by between \$13.5 billion and \$24.6 billion. This would translate into a GDP gain of between \$32.3 billion and \$48.9 billion, based on a multiplier of 1.5 and assumed efficiency gain of 0.2 percent of GNP (see table).

Due to changes required by the GATT Final Act that are difficult to measure, however, ESI has some questions about whether the U.S. economy will obtain all of these gains. ESI believes GATT provisions that change the Subsidies Code and countervailing measures and which could limit our ability to use existing antidumping procedures, and U.S. Section 301 and other existing laws, coupled with the new GATT dispute-resolution procedures, could compromise the U.S. government's ability to deter predatory trade practices. This could offset some or all of the gains that will result from the other provisions.

## III. Recommendations

To remedy these problems, the following objectives and measures should be incorporated into implementing legislation that the Clinton administration and Congress will consider:



- 1) press for additional tariff reductions and market opening;
- 2) reshape U.S. laws on subsidies so that they offer U.S. firms strong provisions to combat unfair practices;
- 3) devise creative and GATT-consistent actions that can be taken under Section 301 of U.S. trade law;
- 4) revise Section 337 of U.S. trade law to facilitate U.S. responses to infringements and unauthorized use of U.S. intellectual property rights; and
- 5) clarify U.S. antidumping and anticircumvention of dumping provisions to ensure that the new GATT measures do not undermine the ability of U.S. firms to take concrete steps against dumping. Special attention needs to be paid to provisions for estimating costs and for calculating when dumping is taking place.

#### ESI Estimates of U.S. GDP Gains from the Uruguay Round Agreement

Annual U.S. Export Gains  
(Probably by 2000 to 2003)

#### Tariff Cuts

\$10 billion to \$17.1 billion

Agricultural Exports \$4 billion to \$6 billion

Commodity Exports \$3 billion to \$4 billion

Processed Food Exports \$1 billion to \$2 billion

Other Tariff Cuts \$6 billion to \$11.1 billion

Paper \$2 billion

Wood Products \$3 billion to \$5 billion

Semiconductors \$0.5 billion

Other Industries \$0.5 billion to \$3.6 billion

Aircraft

\$0.5 billion

Services

\$3.0 billion

Intellectual Property Rights

\$ 5 billion

Trade-Related Investment Measures

\$ 3 billion to 5 billion

Subtotal

\$21.5 billion to \$30.6 billion

Removing tariffs on textiles and apparel (\$6 billion and \$8 billion)

#### Total Trade Gains

\$13.5 billion to \$24.6 billion

#### Potential Downside Risks Due to Changes In:

- 1) The Subsidies Code and Countervailing Measures;
- 2) Antidumping Rules; and
- 3) Section 301 and Dispute Resolution Procedures

Chairman GIBBONS. Thank you very much, Mr. Prestowitz.  
Ms. Hecker.

**STATEMENT OF JAYETTA Z. HECKER, DIRECTOR OF INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE**

Ms. HECKER. Thank you very much, Mr. Chairman.

I am happy to be here to discuss our view of the Uruguay round and to report today that we believe the result represents a comprehensive and remarkable achievement that, overall, will serve U.S. interests. While some specific negotiations are still underway, and there are some concerns that I, too, would like to review with you, we do think that, on balance, U.S. interests have been served.

We look at it from three different ways and have applied three criteria to come to that conclusion. The first one actually relates to something you were talking about earlier, about what the United States really wanted and whether that is a good criterion to apply. Well, that is one we used.

We went back to the kickoff of this round in 1986 and the legislation by the Congress in 1988, in terms of the goals and expectations of what was going to be in the U.S. interest. You may recall that there was widespread agreement that those objectives were very, very ambitious and many believed that they were not really reachable.

Well, it turns out that nearly all of those significant objectives have, in fact, been achieved. One of the notable ones is of course the expansion of the coverage of the GATT to include services and to include intellectual property rights. Also, the inclusion for the first time, the effective coverage of GATT disciplines to agricultural trade. And also the integration of textile and apparel trade into the GATT over a phase in time period. So those are some important objectives.

Now, in addition, an important objective was the strengthening of the dispute resolution system. There was widespread agreement it was not working well, it took too long, panels were blocked and reports never came out. The United States, in fact, had to act in certain instances without GATT approval because clear rulings in our favor were being blocked by other countries. So that, in fact, has also been achieved.

A third objective, of course, was the substantial liberalization of market access, and in 1988 the agreement was to seek a one-third reduction in tariffs worldwide. That too has been achieved. In fact, it is a more significant cut between the United States and the European Union, which is at nearly 50 percent. So that is a significant market opening across the board with many, many significant U.S. sectors benefiting.

Now, the second overall objective or criterion that leads us to conclude that it is in the U.S. interest is how significant the economic gains are for our economy as a whole and for consumers of this country. Trade restrictions are basically a loss to consumers. They are the ones who pay the cost of those restrictions. And there have been some very interesting studies about how high the costs really are on consumers, and the substantial liberalization, with

safeguards and with transition periods, leads to significant economic gains for the United States in the billions of dollars annually.

What is important about those studies is they are all underestimates because none of them include quantifications of the benefits of service coverage. That has been a difficult area to quantify and, likewise, the IPR, the new coverage of intellectual property rights, is not quantified. And you heard this morning from a number of witnesses how absolutely vital it is to modern and orderly business practices to have some international recognition of intellectual property protections.

What is interesting about that one is that the Uruguay round basically surpassed over 20 years of negotiations to upgrade the Paris Convention on protections. The World Intellectual Property Organization has been negotiating for that long. And now with a single aspect of this round all of those long delayed objectives have been achieved. So the potential economic growth is clearly substantial.

And the third criterion that we applied was the substantial agreement among experts that failure to conclude this round would lead to deterioration in world trading conditions; that the multilateral system would falter and U.S. interests and certainly business interests would not be served by the failure to conclude and implement this round. So the results, the objectives have been achieved, the benefits are substantial and the adverse effects of failure to agree have been averted.

That is not to say that there are not some mixed views and there are not some outstanding concerns. We want to also underscore that there are future negotiating items and there are undoubtedly some clarifying issues that the Congress will want to look at in implementing this round.

Now, one area of uncertainty still is, of course, that some of the tariff negotiations have not been finalized. So you will hear from a number of industries that there are some important sectors in which negotiations were supposed to be concluded last Friday, but we do not have the latest on how well they are going. But there are some significant sectors and some industries with some outstanding concerns in that area.

Another concern is about the viability of U.S. trade law. There is no doubt that that has been an important market-opening instrument and some concerns have been directly expressed about assuring the future viability of U.S. trade laws and that is definitely an area that requires and justifies close congressional scrutiny.

Now, a third area of some outstanding concerns is from an industry like the textile industry, which undoubtedly will bear a disproportionate cost of the liberalization. Now, that is often not unexpected in liberalization, that the beneficiaries are not the same as those who lose out from the increased competition, and it is the strong position of the General Accounting Office that those groups should not bear those disproportionate costs and that a well-designed, well-funded comprehensive worker adjustment program is needed, and we have additional work ongoing in our labor and human resources group that will amplify some of the concerns about existing programs shortly.



There is also the concern that some monitoring is needed; that this implementation is not a full-fledged matter, that you can put it on automatic pilot and all the benefits will accrue from this agreement. There are a number of areas that will require close scrutiny and oversight by the Congress as well as the administration. One clearly is the operation of the dispute resolution system within the new WTO, and what is interpreted in terms of the effect on the ability of the United States to act unilaterally.

A second is the Subsidy Code. There is no doubt in the final weeks some of the changes have greatly expanded the potential for abuse of subsidies in regional areas and others, so we think that will require very close scrutiny to assure that companies are not gaining unfair but legal advantage under potential abuse of those new green lighted subsidies.

There was another area mentioned in the last panel, and that is the rapid growth and potentially unfair and inappropriate implementation of antidumping laws across the world. A few years ago there were only three or four countries with antidumping laws, and now they have been expanding widely. There are over 15 now and these are countries with weak institutions and limited judicial systems, and our exporters could be substantially hurt. It is going to be very important to track the adequacy of GATT controls for potential abuse of antidumping laws in other countries, because of their potentially substantial damage to U.S. exporters.

So that basically concludes our statement. We think it is important, we think it is in the U.S. interest, we think there are some outstanding concerns that need to be addressed and we think there is some tracking that is very important as implementation ensues.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF JAYETTA Z. HECKER, DIRECTOR  
INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS  
GENERAL GOVERNMENT DIVISION  
U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to testify on the recently concluded Uruguay Round of the General Agreement on Tariffs and Trade (GATT). My statement is based on our analysis of the negotiations and of the agreement reached as of December 15, 1993.

After 7 years of negotiations, the Uruguay Round has been concluded. While some specific tariff negotiations are still being finalized, on balance the agreement reached to date appears to be in the overall U.S. interest because (1) the U.S. achieved its most important negotiating objectives, (2) most studies project a net economic gain to the United States and the world economy, and (3) experts generally agree that rejection of the agreement would likely lead to deterioration of world trading conditions.

Notwithstanding the positive overall benefits, the agreement is so complex and far-reaching that Congress will hear a wide range of views and concerns. Some industry groups cannot determine the likely impact of the agreement on their businesses until specific tariff rates are finalized. Other industries, particularly the textile industry, are anticipating disruptive effects from the agreement. This situation reflects the fact that trade liberalization imposes costs on some specific industries and their labor forces. Effective and adequately funded programs must be in place to address such dislocations. In addition, some effects of the agreement will only become apparent over time, such as how the new dispute resolution mechanisms will affect U.S. interests, and the breadth and significance of the World Trade Organization (WTO).

IMPORTANT NEGOTIATING OBJECTIVES ACHIEVED

The agreement to date has achieved the most important overall objectives, representing the most comprehensive trade accord ever reached. Our assessment is based on the objectives set out by the GATT ministerial conference in 1986; parallel objectives set out by the Congress in the 1988 Omnibus Trade and Competitiveness Act (P.L. 100-480); and GAO's 1985 assessment of improvements needed in the multilateral trade system. In 1986, the GATT ministerial conference--with strong leadership from the United States--launched the Uruguay Round of negotiations with what was acknowledged to be an ambitious set of objectives. The ministers intended to extend GATT principles to areas not previously covered, such as services, investment, and intellectual property rights; to extend more effective disciplines to agricultural trade; to strengthen international disciplines and procedures dealing with unfair trade practices; and to open markets by reducing tariffs an average of one-third and eliminating nontariff barriers and subsidies.

The U.S. Congress supported these broad negotiating objectives in the 1988 Omnibus Trade and Competitiveness Act. For example, the United States wanted to extend GATT coverage to services, a sector that yielded about a \$60-billion trade surplus in 1992. The United States sought to reduce trade-distorting and unfair trade practices in a variety of sectors by seeking to control foreign government subsidies and by adopting more timely and effective dispute resolution mechanisms. The United States also wanted to increase protection against unauthorized use of patented and copyrighted products, and thus sought to extend coverage of GATT disciplines to the protection of intellectual property rights. And it hoped to achieve better market access for competitive U.S. industries by reducing both tariff and nontariff barriers.

In 1985, GAO, in its assessment of issues for future multilateral trade negotiations, concluded that the evolving global economy required that the coverage of the GATT system be expanded. We specifically concluded that both agriculture and services ought

to be brought effectively under GATT disciplines.¹ In a 1987 report, GAO said that general agreement existed that the GATT dispute settlement process was too long and needed improvement.² The agreement reached has substantially achieved these important objectives. Significant areas not previously covered were brought under the GATT framework, including services, investment, and intellectual property rights. This achievement set meaningful precedents by applying to those areas (with some designated exceptions) the basic GATT principles of most-favored-nation (MFN) and national treatment, which are the primary tenets for eliminating discrimination in international trade. In agriculture, the agreement extends GATT disciplines to agricultural products for the first time: Subsidies are to be lowered over time, markets opened, and nontariff barriers converted to tariffs. The services agreement provides for secure access to foreign markets for our increasingly competitive service industries, such as advertising, information and computer services, engineering, and tourism.

International dispute resolution mechanisms were strengthened by specifying detailed procedures and setting definite time limits at various stages of activity. A surveillance mechanism has been designed to ensure that offending parties abide by decisions against them, and new voting procedures will prevent parties to a dispute from blocking decisions. The agreement on trade-related intellectual property rights (TRIPS) offers better protection for U.S. patents and copyrights through strengthened enforcement at national borders and the application of dispute settlement procedures. Creation of the WTO brings together disciplines applying to goods and services, along with coverage of intellectual property rights, and offers opportunity for "cross-retaliation" to enforce agreement--that is, an opportunity to deal with unfair practices in one sector by retaliating in another.

Overall, it appears that tariffs will be substantially reduced or eliminated, particularly in industries important to the United States such as construction equipment, agricultural equipment, medical equipment, steel, beer and distilled spirits, pharmaceuticals, paper, toys, and furniture. Though specific tariff schedules have not been finalized, the GATT Deputy Director General who oversees market access issues estimated that tariffs would be reduced by about one-third overall. More countries set maximum tariff rates for the first time on a wider variety of goods, creating greater predictability in international business transactions.

Thus, viewed from an overall national perspective, it is clear that important markets will be opened and tariffs will be reduced. However, some time will be needed to analyze individual country offers to determine the extent to which the United States achieved specific market access liberalization in such sectors as services and agriculture. In addition, negotiators agreed to defer negotiations in selected areas, including basic telecommunications, steel, financial services, maritime services, and civilian aircraft, beyond this round. And differences in the audiovisual sector remain unresolved, largely because of disagreements between the United States and the EU over access to European broadcast markets.

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¹See Current Issues in U.S. Participation in the Multilateral Trading System (GAO/NSIAD-85-118, Sept. 23, 1985).

²See International Trade: Combatting Unfair Foreign Trade Practices (GAO/NSIAD-87-100, Mar. 17, 1987).



### MOST STUDIES FORECAST ECONOMIC GAINS

The significant tariff reductions and broader coverage achieved in the round are expected to expand both the U.S. and the global economies. In general, benefits are anticipated from resources being allocated to more efficient sectors, and from consumers having access to better products at lower prices (static gains). Benefits are also expected from a more confident business environment and increased productivity due to wider exposure to more competition (dynamic gains).³

Several studies have tried to quantify the anticipated benefits of the Uruguay Round. The GATT Secretariat, for example, estimated that world merchandise trade would increase about 12 percent by the year 2005 (\$745 billion in 1992 dollars) due to the agreement. It also estimated that world income would be about \$230 billion (1992 dollars) more by the year 2005 than it would have been without the agreement (less than 1 percent of likely total world income). Similarly, the Organization for Economic Cooperation and Development (OECD) estimated a \$274 billion gain (1992 dollars) in world income realized gradually by the end of a projected 10-year period. These studies, which used computable general equilibrium models, may underestimate benefits because they generally do not attempt to measure either increased trade in services or potential dynamic gains.⁴

The Office of the U.S. Trade Representative (USTR), working with the Council of Economic Advisers (CEA), concluded that in the year 2000, U.S. gross national product (GNP) would be about \$219 billion more (1989 dollars). This amount is equivalent to an increase in GNP of 3 percent. The USTR/CEA report included in their analysis the effect of dynamic gains, which constitute about two-thirds of the total increase projected.

One negative assessment of the economic impact of the GATT agreement on the United States was developed by the Economic Strategy Institute (ESI). ESI's analysis was based on sectoral estimates of the impact of the GATT on U.S. imports and exports. ESI estimated that the U.S. trade deficit would increase between \$32 billion and \$37 billion and U.S. gross domestic product (GDP) would decline as a result between \$36 billion and \$62 billion per year. The ESI study is the only one that forecasts an increase in the U.S. deficit and a reduction in GDP.

Nevertheless, while economic forecasts of the effects of the agreement are not precise and vary somewhat, most studies we examined project consistent net gains in income and trading activity for both the world and the U.S. economies.

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³Though economists believe that dynamic gains from trade liberalization can be substantial and even more important than static gains, the dynamic gains are not yet well understood and cannot be easily estimated.

⁴These studies used certain assumptions about the level of tariff cuts in calculating results. The GATT Secretariat study used the pattern of cuts proposed in the Uruguay Round draft agreements as of November 19, 1993. OECD assumed a 36 percent cut in tariffs and agricultural subsidies. As stated earlier, the GATT Deputy Director General who oversees market access negotiations told us that the cuts already proposed as of December 15, 1993, represent about a one-third reduction in tariffs overall.

REACHING AGREEMENT IMPORTANT TO  
REVITALIZATION OF MULTILATERAL TRADE REGIME

By the mid-1980s, trade experts felt that the multilateral trade regime of the GATT was deteriorating. As we pointed out in our 1985 testimony before the Senate Committee on Foreign Relations, Subcommittee on International Economic Policy, Oceans and Environment,⁵ nations--including the United States--were using bilateral and unilateral actions that undermined some important GATT principles. The World Bank noted similar problems, stating that "widely held perceptions in government and business circles are that GATT has become largely irrelevant to today's world and that, where it is relevant, its rules are more honored in the breach than in the observance."⁶

Other experts agreed that revitalizing the GATT was essential to promoting economic growth. Because the United States was--and still is--the world's largest exporting and importing country, and because trade is becoming more important to the U.S. economy (constituting about 10-12 percent of its GDP in 1993), we stated in our 1985 testimony that having a strong multilateral trade regime was in this nation's overall best interests. The World Bank also noted that, if the Uruguay Round were to fail, there likely would have been "an acceleration in the trends toward protectionism, discrimination, bilateral deals, regional arrangements, and cartel-like 'orderly marketing arrangements'." It likened these possible events to the disastrous worldwide policies in the 1930s that led to the global depression. Moreover, GATT Secretariat officials and heads of foreign government missions to the GATT--including Japan and the EU--told us that failure to successfully conclude the Uruguay Round would have seriously undermined the multilateral trade regime.

DESPITE OVERALL GAINS, SPECIFIC  
INDUSTRIES' CONCERNS REMAIN

In reports prepared analyzing the December 15, 1993, agreement, broad-based private sector advisory groups generally supported the GATT.⁷ The groups stated that the agreement will significantly strengthen and improve the GATT system. They also felt that implementing the agreement will expand international trade and investment and create a more orderly and predictable global business environment.

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⁵See United States Participation in the Multilateral Trading System, statement of Allan I. Mendelowitz, Associate Director, National Security and International Affairs Division (Sept. 26, 1985).

⁶The Uruguay Round: A Handbook on the Multilateral Trade Negotiations, ed. by J. Michael Finger and Andrzej Olechowski, The World Bank (Washington, D.C.,: Nov. 1987), p. 7.

⁷The Trade Act of 1974 (P.L. 93-618), as amended by the Trade Agreements Act of 1979 (P.L. 96-39), established a program to provide private industry consultations on trade negotiations and trade policy. Among other organizations, the program structure includes an Advisory Committee on Trade Policy and Negotiations (ACTPN), a high-level group that covers a variety of industries, labor organizations, environmental and consumer groups, and other interests; the Industry Policy Advisory Committee (IPAC), comprised of business leaders representing manufacturing, service, and agricultural sectors, as well as an environmental representative; and Industry Sector Advisory Committees (ISACS) representing more specific industry groupings. These committees and others in the Consultations Program analyzed the December 15, 1993, agreement and submitted reports in January 1994 to the President, the Congress, and USTR.

However, these reports revealed that opinions on different aspects of the agreement often vary by industry. In the antidumping area, for example, the United States achieved most of its negotiating objectives, designed to align GATT dispute settlement procedures with U.S. antidumping laws and practices. The IPAC views were split between companies that perceived their primary interest in terms of exporting (which exposes them more to other nations' antidumping regimes), and companies that perceived an effective domestic antidumping law as in their and the nation's best interests. In general, the former group was more supportive without qualification of the current agreement, believing that it was in the U.S.' overall economic interest. The latter group, with production based primarily in the United States, believed that dumping "poses a special threat to U.S. companies given the relative openness of the U.S. market." While acknowledging that the agreement's provisions largely reflect the adoption of concepts and procedures in U.S. law, this latter group found wide variances that diminished the benefits of that law to domestic industries.

Most of the reports issued by other, more industry-specific advisory groups also tentatively supported the agreement. Yet these reports also pointed to varied concerns. For example, the Agricultural Technical Advisory Committee for Poultry and Eggs predicted that the agreement will "have a devastating effect on U.S. subsidized egg exports." Two industry advisory committees on services noted that the agreement did not yield significant trade liberalization in several service industries, such as telecommunications, audio-visual, and financial services, that constitute a substantial portion of the service exporting sector. The Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Matters' report did not support the market access agreement because the committee believes that not enough countries have agreed to harmonize tariffs to agreed-upon levels and that other essential objectives, such as the elimination of nontariff measures and the special treatment of import-sensitive products, had not been met. The Industry Functional Advisory Committee on Intellectual Property Rights for Trade Matters expressed concern that the agreement contains overly long transition periods for developing countries (5 or 10 years) and fails to eliminate harmful derogations to national treatment (which allow the EU to continue to deprive U.S. interests of funds from blank tape levies.)

#### NEED FOR WORKER ADJUSTMENT ASSISTANCE

While liberalized trade is generally considered important to the future health of the U.S. economy, it may also lead to disruptions that require economic adjustments. A healthy economy must have the ability to change and redirect economic resources and people to its most efficient and productive sectors in order to grow and create new employment. These overall benefits, however, are necessarily accompanied by costs, some of which may fall heavily on certain sectors of the economy and the labor force. Consequently, trade liberalization without programs to help those who are injured means that the benefits are spread broadly across the economy, while certain groups bear a disproportionate share of the cost.

Some large industries fear significant job losses from increases in lower-priced imports due to the GATT. The Industry Sector Advisory Committee for Textiles and Apparel, for example, feels that phasing out quotas established under the Multifiber Arrangement (MFA), as currently agreed, would "cause the loss of hundreds of thousands of U.S. textile and clothing jobs, reduce U.S. production and adversely impact U.S. cotton, wool and manmade fiber producers."



Consequently, we believe that a comprehensive reemployment assistance program, aimed at dislocated workers, is needed. Such a program should provide the full range of services required by displaced workers to facilitate their reemployment and should be available to all such workers regardless of the reason for their dislocation. It should be different from the current patchwork of programs that, in some cases, are more narrowly targeted and that provide services based only on the reasons for the dislocation.

CONTINUED MONITORING NEEDED  
DURING IMPLEMENTATION

If the Uruguay Round agreement is approved, some important issues will evolve over a period of years during the GATT's implementation. They will need to be monitored to assure that commitments are fulfilled and expected benefits of the agreement are realized. Among these important issues are the following:

- **Dispute Resolution.** The new dispute resolution mechanisms and the operations of the newly created WTO will need to be studied. Some industries and Members of Congress have expressed concerns that under the new regime, the United States has reduced its ability to use domestic trade laws to combat unfair trade practices by foreign entities. Concerns also exist about how U.S. interests will fare before dispute panels using new decisionmaking rules in the WTO and the new dispute resolution mechanism. While USTR officials maintain that the agreement is in the U.S. interest and that the United States has not weakened the primacy of domestic U.S. laws, some experience will be needed to fully evaluate the effects. U.S. participation in this institution will have to be carefully managed to assure that U.S. interests are not compromised.
- **Government Subsidies.** Foreign government use of subsidies should be evaluated. Subsidies have historically been a troublesome area for negotiation because of the need to balance governments' legitimate rights to advance internal social policies against the potential trade distortions they could cause. Several industry advisory committees and Members of Congress have voiced concern that some nations could broadly interpret the category of permissible, nonactionable subsidies (called "green-lighted" subsidies) to gain a competitive advantage.

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Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I will be pleased to respond to any questions you may have.



United States  
General Accounting Office  
Washington, D.C. 20548

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General Government Division

B-256944

April 13, 1994

The Honorable Bill Archer  
Ranking Minority Member  
Committee on Ways and Means  
House of Representatives

Dear Mr. Archer:

As you requested, this correspondence provides information that expands on our February 22, 1994, testimony on the results of the General Agreement on Tariffs and Trade (GATT) Uruguay Round agreement.¹ As agreed with your staff, we are providing additional information, based on discussions with GATT officials and other sources, regarding the global proliferation of antidumping regimes and the concerns of U.S. exporters. This letter summarizes the views of some high-ranking GATT Secretariat officials and some Industry Policy Advisory Committee (IPAC)² members on the antidumping proliferation issue.

BACKGROUND

Until recently, antidumping laws were employed in only a handful of countries; however, an increasing number of countries have begun to adopt them. According to a January 1994 IPAC report to the U.S. Trade Representative addressing the major provisions of the Uruguay Round agreement, over 40 countries currently have antidumping laws, and more are under development.

The antidumping section of the IPAC report presented two different positions on the results of the agreement reached in Geneva. The first position presents the views of companies in import-sensitive industries that use U.S. antidumping laws and see them as being in their and the U.S.' best interest. It is the opinion of the IPAC Chairman that

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¹See International Trade: Observations on Issues in the Uruguay Round Agreement (GAO/T-GGD-94-98, Feb. 22, 1994).

²IPAC is part of the private sector advisory committee system used to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Policy advisory committees provide advice based upon the perspective of their specific sector or area.

the first position represents the majority position of IPAC members. The second position represents the views of import or global-sourcing companies and exporters that are exposed to antidumping laws and increasingly see them as being nontariff barriers to trade. These members favorably view the new GATT antidumping agreement. They believe it strikes a balance between the interests of domestic industries seeking the protection of U.S. antidumping laws, on the one hand, and globally competitive domestic industries that export a substantial percentage of their products to the world market, on the other hand.

GATT SECRETARIAT CONCERNS ABOUT  
ANTIDUMPING PROLIFERATION

Some high-level GATT Secretariat officials have expressed concerns that global proliferation of antidumping regimes could pose serious challenges to exporters, even with the improvements achieved by the antidumping provisions of the Uruguay Round agreement.

The officials expressed concern about the global proliferation of antidumping regulations among developing nations. They indicated that many developing countries lack the knowledge, resources, and legal systems to effectively design and implement antidumping laws.³ In response to these concerns, the GATT Secretariat has begun to provide technical assistance to developing countries in an effort to improve the quality of their antidumping legislation and its administration.

Some GATT officials also believed that one aspect of the negotiating position pursued by the United States and adopted in the agreement could work to the detriment of exporters facing foreign antidumping regimes. The United States sought

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³For example, an antidumping action taken by South Korea against U.S. exports of polyacetal resin (a plastic product used in development of precision equipment) illustrates how the proliferation of antidumping laws could affect U.S. exporters. In this case, Korea imposed, through public notice, an antidumping duty against imported U.S. polyacetal resin. Contrary to GATT practice, Korea imposed the duty without a clear explanation of why it had done so. In response, the United States took the case to a GATT dispute settlement panel. In April 1993, the GATT dispute panel upheld the U.S. protest. In response, Korea agreed to remove the duty.



a standard of review⁴ to protect import-sensitive industries through the application of U.S. antidumping laws, should the United States be brought to the GATT for dispute resolution. However, this same standard of review similarly protects other countries' application of their domestic antidumping laws, which could have a damaging effect on U.S. exports to those countries.

IPAC SECOND POSITION CONCERNS  
ABOUT ANTIDUMPING PROLIFERATION

IPAC members--who are exposed to different countries' antidumping regimes--view the global proliferation of antidumping laws as a serious threat to U.S. exporters. Foreign antidumping laws, while commonly modeled after U.S. statutes, do not necessarily include all of the procedural safeguards contained in U.S. law, such as assuring fair treatment of both the domestic industry and importers. Because of the proliferation issue and the selective adoption of U.S. antidumping laws by other countries, these IPAC members were concerned that any changes to U.S. antidumping laws--such as those proposed in the first IPAC position--could work to the detriment of U.S. exporters.

These IPAC members also felt that the increased use of reciprocity provisions in foreign countries' laws could create serious problems. These provisions permit foreign authorities to apply to U.S. exports the same practices as applied in the United States to imports. For example, the European Union (EU) and at least five other countries⁵ now have total or partial reciprocity clauses in their current antidumping statutes. In addition, these IPAC members expressed concern that more countries will follow the EU's lead and adopt reciprocity provisions.

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⁴Standard of review is the criterion that GATT dispute panels use to determine the merits of a given case. The standard is used to define the level of review that is appropriate, given the issues involved in that case. For example, antidumping panels have the task of determining (1) whether the authorities' establishment of the facts was proper and (2) whether their evaluation of those facts was unbiased and objective. If the panel determines that these two criteria were met, the evaluation will not be overturned, even though the panel might have reached a different conclusion.

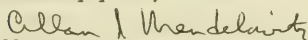
⁵ Mexico, Australia, Colombia, Venezuela, and Peru.

Some IPAC members believe that these reciprocity laws add to the potential risks of changing U.S. antidumping laws. They perceive that the interests of U.S. exporters and domestic producers are carefully balanced in current U.S. antidumping laws. And, they consider that the changes proposed in the first IPAC position would alter that balance. Furthermore, they fear that because of foreign reciprocity laws, any such changes to U.S. laws could be applied against U.S. exports and harm U.S. exporters.

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If you or your staff have any questions concerning this letter, please call me at (202)512-9607. The information in this letter was developed by Randy Schultz, Assistant Director; Kurt Kershow, Evaluator-in-Charge; and Kurt Burgeson, Staff Evaluator.

Sincerely yours,



Allan I. Mendelowitz, Managing Director  
International Trade, Finance,  
and Competitiveness  
(280070)

Chairman GIBBONS. Well, thank you, Ms. Hecker and Mr. Prestowitz.

Both of you are recognized as being pretty effective critics of the system and we are glad to have your input. We will try to follow it as best we can. I realize the implementing legislation is going to be very difficult to draw. But staff is back here listening as intensively as I am, and we encourage you to keep in contact with them and with us.

Thank you very much.

Mr. PRESTOWITZ. You know, Mr. Chairman, if the two of us are for it, it must be OK.

Chairman GIBBONS. I was going to say that, but I didn't want to abuse you. Thank you, sir.

Next we have Mr. Samuels, Mr. Black, Mr. LaRue and Mr. Bucks, representing the National Foreign Trade Council, the Pro Trade Group, Philadelphia Regional Port Authority, and the Multistate Tax Commission. And that is an interesting conglomeration of points of view.

Mr. Samuels, we remember you in your other incarnation, and we welcome you here.

**STATEMENT OF MICHAEL SAMUELS, CHAIRMAN, INTERNATIONAL TRADE AND INVESTMENT COMMITTEE, NATIONAL FOREIGN TRADE COUNCIL, INC., AND PRESIDENT, SAMUELS INTERNATIONAL ASSOCIATES, INC.**

Mr. SAMUELS. Well, thank you, Mr. Chairman, for holding this important hearing and for your unwavering commitment to global trade liberalization as well as your strong leadership on trade issues generally.

Chairman GIBBONS. Well, thank you.

Mr. SAMUELS. I appreciate the opportunity to appear before this committee. I do so on behalf of the National Foreign Trade Council, where I serve as chairman of the International Trade and Investment Committee. As you know, I also am president of Samuels International Associates, an international trade and public affairs consulting firm based in Washington, D.C.

The NFTC's membership consists of nearly 500 U.S. manufacturing companies, financial services institutions and other firms from a broad cross-section of U.S. business having substantial international operations and/or interests. NFTC members account for more than 60 percent of all nonagricultural U.S. exports and a like percentage of all U.S. private-foreign investment.

Our prepared statement, Mr. Chairman, focuses both on substantive GATT negotiating areas, specific items, as well as on procedural matters surrounding consideration of the legislation necessary to implement the trade agreement. In my oral testimony, I will summarize these topics, and as the U.S. Ambassador to the GATT when the Uruguay round commenced in 1986, attempt to put in proper perspective just what a remarkable accomplishment the agreement before us represents.

It is important, however, to congratulate President Clinton, Ambassador Kantor and the entire U.S. negotiating team for bringing the Uruguay round to a meaningful fruition. You know that 4 year round we launched in 1986.



Chairman GIBBONS. Oh, yes.

Mr. SAMUELS. In sum, Mr. Chairman, this agreement is not all we had hoped for in 1986, but it will result in a better world trading system in the U.S. interest. The world economy will benefit, the U.S. economy will benefit. Therefore, the NFTC strongly urges your committee and the entire Congress to move toward approval of the Uruguay round agreement and approval expeditiously.

Let me say a few words, Mr. Chairman, about the substantive benefits of the Uruguay round agreement. I will touch on some of the primary issues receiving our organization's attention and support.

First, there has been real progress in the market access area. However, Mr. Chairman, I would urge you and your committee to encourage the administration to utilize the time allowed until March 31 of this year to improve that market access package even further. There is still room and there is still time.

Second, we believe that the agreement will lead to the creation of a more effective multilateral trading system, one in which the United States and other nations could have greater respect than the current system. In particular, we are pleased at the strengthening of the GATT dispute mechanism and the newly proposed World Trade Organization. We believe this does precisely what you and the Congress and the executive branch set out to accomplish in 1986.

Third, we believe that the subsidies and countervailing measures section of this are very important. In particular, we would note that the code of the past and the future will be made applicable to all members of the World Trade Organization so that in one fell swoop it will be pushed across the world trading system, considerably further than the present system provides.

We appreciate very much, Mr. Chairman, your own personal views that the subsidies are the Achilles heel, as I believe you have said, of the world trading system. And in that context, we are not convinced that we have done all that needs to be done, and we would hope that this is an area where future negotiations will be able to put even more attention.

We also have been very interested in the work on government procurement and we are hopeful that negotiations covering the agreement on government procurement can be successfully concluded. If so, U.S. firms' access to government contracts and important sectors within signatory countries will be greatly enhanced.

Let me turn to the new areas. After all, that is a major accomplishment of the round. In terms of trade-related investment measures, for the first time there clearly is establishment, some discipline on some of these measures. However, there is also a revision which allows for a further review and further extension of these trade-related investment measures, and we believe that they are an important area for further negotiations.

In terms of intellectual property, Mr. Chairman, we believe substantial progress was made in the round and we support implementation of this aspect of the agreement as well. However, there are some shortcomings in the TRIPs code and the U.S. negotiating agenda in this area is far from complete. We urge the government to develop an aggressive program to seek further improvements in

intellectual property protection in future bilateral and multilateral negotiations.

In the trade and services area, this is one of great importance and it is yet one in which there was a significant accomplishment, although a general accomplishment. Without question, the agreement isn't perfect but its faults should not overshadow the tremendous progress that the agreement represents. Still, we do believe that there are areas in services where more work needs to be done, more attention needs to be paid, and although I realize this committee felt that it had nothing further to do after the Uruguay round was completed, I am afraid to tell you there will be some things in the services area as well as in the goods area for you to continue following, Mr. Chairman.

As you know, particularly in the area of financial services, negotiations are expected to continue into 1995 and we urge you to follow that very closely and give whatever kind of push you can to bring it about more satisfactorily than at the present time.

We also recognize in the area of telecommunications there is more work to be done. And this is an area of great importance to many of our members and we urge you to follow the ACTPN recommendation that the U.S. Government place a high priority on the telecommunications negotiations and use all avenues to both maintain the negotiating leverage that we have and to pursue bilateral arrangements where necessary.

Mr. Chairman, I believe the bottomline with respect to the new areas with respect to the round is simply this: Much important progress was made but our trade-liberalizing efforts are light-years away from being complete.

Finally, because of how much remains to be done, we urge you to pass legislation that would renew and preserve the President's ability to negotiate trade agreements under fast track procedures.

In conclusion, Mr. Chairman, we thank you and your committee for the work you have done in staying involved in these negotiations, making sure they were carried forward appropriately in the U.S. interests, and urge you to move forward and support the agreements that have been negotiated.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF MICHAEL SAMUELS  
 PRESIDENT, SAMUELS INTERNATIONAL ASSOCIATES, INC.  
 AND  
 CHAIRMAN, INTERNATIONAL TRADE AND INVESTMENT COMMITTEE  
 NATIONAL FOREIGN TRADE COUNCIL, INC.

BEFORE THE  
 SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS  
 U.S. HOUSE OF REPRESENTATIVES

ON  
 THE URUGUAY ROUND OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE  
 FEBRUARY 22, 1994

Thank you, Mr. Chairman, for holding these important hearings and for your unwavering commitment to global trade liberalization, as well as your strong leadership on trade issues generally.

I appreciate the opportunity to appear before this Committee. I do so on behalf of the National Foreign Trade Council, Inc. ("NFTC" or "the Council"), where I serve as Chairman of the International Trade and Investment Committee. As you know, I also am President of Samuels International Associates, an international trade and public affairs consulting firm based in Washington, D.C.

The NFTC's membership consists of nearly 500 U.S. manufacturing companies, financial services institutions, and other firms from a broad cross-section of U.S. business having substantial international operations and/or interests.

The primary purpose of the Council, which was founded in 1914, is to develop and advocate policies reflecting the interests and consensus of our members; policies designed to expand exports, protect U.S. foreign investment, enhance the competitiveness and profitability of U.S. industry, and promote and maintain a free and equitable international trading system. NFTC members account for more than 60% of all U.S. non-agricultural exports and a like percentage of all U.S. private foreign investment.

Our prepared statement focuses both on substantive, GATT negotiating area-specific items, as well as on procedural matters surrounding consideration of legislation necessary to implement the Uruguay Round of GATT trade agreement. In my oral testimony, I will summarize these topics and, as the U.S. Ambassador to the GATT when the Uruguay Round commenced in 1986, attempt to put in proper perspective just what a remarkable accomplishment the agreement before us represents.

First, congratulations are in order to President Clinton, Ambassador Kantor, and the entire U.S. negotiating team, for providing the leadership essential to bringing the Uruguay Round to a meaningful fruition.

Next, on the matter of timing, the NFTC strongly urges your committee and the entire Congress to move toward expeditious approval of the Uruguay Round agreement. As you well know, and as was pointed out on December 14, 1993, by U.S. Trade Representative Michael Kantor, "conclusion of the Uruguay Round is essential to sustained economic growth and the creation of good jobs in America and throughout the world. Over the next decade, the global economy will be \$6 trillion wealthier for having reduced barriers and opened markets in this [Uruguay] Round [of GATT]." We believe deeply in Ambassador Kantor's assessment, and in the relationship between rapid approval of the GATT agreement and the ability of the United States to reap the obvious benefits of the Round sooner rather than later.

We know that you will be addressing the question of the likely budgetary impact of implementation of the Uruguay Round package.



If it would be helpful to you, we can share with you the fact that based on discussions we have had with many of our members, we are confident that the increased market access and export opportunities provided by this agreement will generate increased American jobs, U.S. export sales and, likely, profits. This additional economic activity, we believe, means more U.S. income subject to U.S. taxation and, accordingly, significantly more revenues to the U.S. Treasury.

Lastly on the procedural side, there is increasing discussion of marrying legislation to implement the GATT agreement to an array of other trade provisions pending consideration in Congress. While we would not encourage this, we would hope that if the political climate necessitates such a scenario, this would not lead to a delay in the approval and implementation of the Uruguay Round package, and that no provisions would be included that would place further restrictions on entry to the U.S. market. As I stated previously, we believe that the earlier the Uruguay Round is implemented, the sooner America and American workers will begin to benefit from increased global trade opportunities.

Let me turn now, Mr. Chairman, to the substantive benefits spawned by the Uruguay Round agreement. I will touch on some of the primary issues receiving our organization's attention and support.

In the market access area, the agreement should cut global tariffs by approximately one-third and provides for "zero-for-zero" agreements governing tariffs on medical equipment, pharmaceuticals, construction equipment, and many other products. As our previous NPTC Chairman Donald V. Fites, Chairman and CEO of Caterpillar, Inc., is fond of saying of both the NAFTA and GATT, such agreements amount to what are essentially enormous tax cuts for U.S. exporters and the products they sell. I couldn't agree with that characterization more and would urge your colleagues to see this agreement in the same light. I would, however, urge you to encourage the Administration to utilize the time allowed -- until March 31 -- to improve that market access package even further.

The benefits of the Uruguay Round package extend far beyond market access in goods. A goal that you and I have long shared, Mr. Chairman, and one embraced by many in the trade policymaking arena, is the creation of a more effective multilateral trading system; not one that would necessarily obviate the desirability of and/or need for regional and bilateral trade agreements, but one that the United States and other nations could have respect for as the preeminent trading organization paving the way to a truly free and open global trading system.

Because the GATT dispute settlement mechanism had several clear inadequacies, many argued the multilateral trading system could only improve and gain credibility if its dispute resolution procedures were improved. The dispute settlement process negotiated in the Uruguay Round, and the newly-proposed World Trade Organization of which this process will become a cornerstone, take us much closer to the kind of credible multilateral trading system that has proved so elusive.

The expedited timetable under which the dispute resolution process will run its course, in tandem with the greater automaticity of the adoption of GATT panel decisions, will yield significant benefits for U.S. exporters. No longer will one country standing alone have the capability to block adoption of panel reports.

Of course this also applies to the United States's ability to block reports unfavorable to American interests. However, there are far more instances in which the United States finds itself as the plaintiff seeking action against a trading partner's GATT-

inconsistent practices, as compared to situations in which the U.S. finds itself defending certain trade-restrictive U.S. practices against foreign complainants. This should be even more true in the future, as more countries will have to adopt more obligations under the WTO.

And there will be times when the political climate in the United States is such that, notwithstanding an unfavorable GATT ruling against a certain GATT-incompatible American practice, our government will make a calculated decision not to abandon such practice. That may well be the case; but our government must also be prepared to make the equally politically-difficult decisions of what we're willing to pay to maintain any such GATT-violative policies. When all is said and done, however, the United States remains a big winner on the dispute settlement issue.

The GATT code on Subsidies/Countervailing Measures is another area of keen interest to NFTA members. The Uruguay Round Subsidies Code Agreement will help discipline foreign subsidies and provide the U.S. Government with more effective measures to address foreign government subsidization.

Notwithstanding the benefits of the proposed Subsidies Code Agreement, the NFTA shares concerns raised about the new category of subsidies that would be permissible under the Code, and urges that these concerns be addressed through vigilant monitoring and enforcement. The U.S. Government should monitor foreign government research and development activities under this provision with a view toward possible modification in the 18-month review. With respect to regional assistance and environmental aids, it is critical that the Administration establish a mechanism for effective monitoring and enforcement of these provisions, consistent with the notification, consultation and remedy provisions in the Agreement.

On the matter of government procurement, we are hopeful that negotiations covering the Agreement on Government Procurement can be successfully concluded. If so, U.S. firms' access to government contracts in important sectors within signatory countries will be greatly enhanced.

Regrettably, accession to the Agreement on Government Procurement will not be required of members of the World Trade Organization, thus resulting in limited participation. For this reason, the NFTA would strongly support U.S. Government efforts to seek expanded coverage of the agreement through future bilateral negotiations.

For the first time such critical areas as trade-related intellectual property (TRIPs), trade-related investment measures (TRIMs), trade in services (GATS), and agricultural trade will be incorporated into the GATT system. Meaningful trade liberalization in these areas will continue to be absolutely critical to the ability of U.S. firms to sell their goods and services to, and invest in, established and developing markets throughout the world.

On the matter of trade-related investment measures, the Uruguay Round for the first time clearly establishes that the investment-related measures that most seriously distort trade can be disciplined under GATT procedures. The TRIMs Agreement ensures that practices, such as domestic content and trade-balancing requirements, inconsistent with Article III are prohibited. In addition, the Subsidies Agreement prohibits the use of export performance requirements if they are tied directly or indirectly to incentives, such as tax holidays. Further it is also important that the need for possible further development of disciplines over trade-distorting investment measures is recognized in the fifth year review provided in the Agreement.



With respect to the TRIPs negotiations, our members with a critical stake in strong international rules governing patents, trademarks, copyright, trade secrets and semiconductor chips believe substantial progress was made in the Uruguay Round and support implementation of the GATT Agreement. However, there are shortcomings in the TRIPs Code and the U.S. negotiating agenda in this area is far from complete. For example, the United States was unable to achieve a shortening of the 5- and 10-year transition periods for developing countries to implement Uruguay Round TRIPs provisions. We continue to believe these periods are excessive and discriminatory against a key U.S. industry. We urge the U.S. Government to develop an aggressive program to seek further improvements in intellectual property protection in future bilateral and multilateral negotiations.

In the trade in services area, one of obvious growing importance to the U.S. economy and the creation of American jobs, important progress was made but a great deal of work remains to be done.

One of the most significant accomplishments of the Uruguay Round was the creation of a framework of rules for services trade. Until this ambitious Round, services had been left out. Without question, the agreement is imperfect; but its faults should not overshadow the tremendous progress the agreement represents.

A criticism often leveled at the agreement is that relatively few existing trade barriers were removed. That may be true as a general statement, but some benefits are hidden. One example is the portion of the agreement covering payments and transfers. Many services firms are hampered by government restrictions on payment for work they do abroad. Under the services agreement, countries are subject to the payments disciplines of the agreement on every sector they schedule, regardless of the quality of the commitment.

Other sectors -- particularly those that are not heavily regulated, such as consultancy -- do not need trade barriers removed, so much as a commitment not to impose barriers in the future. For these sectors, the agreement is very beneficial even though no existing barriers were eliminated.

Another provision of the agreement of particular value is the Decision Concerning Professional Services. This Decision creates a Working Party on Professional Services under the Council on Trade in Services and sets out a work program focusing on the following areas:

- o ensuring that domestic regulation of accountancy is based on objective criteria and is not used as a barrier to market access;
- o encouraging the development and adoption of international accounting standards; and
- o establishing guidelines for the mutual recognition of professional qualifications.

This work program is an important advance that will benefit not only accounting firms, but business as a whole. We urge Congress and the Administration to ensure that the work program is pursued vigorously.

While there are areas of progress, there are other areas of disappointment. Some U.S. services providers faced before the Uruguay Round -- and will continue to face after implementing legislation is hopefully approved later this summer -- formidable market access barriers in major overseas markets.

The NFTC would agree wholeheartedly with the ACTPN Services group's assessment in two areas of critical importance to the NFTC's membership. Specifically, the report states that "the United States has not yet attained the objective in this area



(banking, securities, and insurance) of eliminating 'barriers that deny national treatment and restrictions on establishment and operation', since final draft schedules for key markets were inadequate. The United States appropriately insisted until the conclusion of the negotiations it was unwilling to extend most-favored-nation treatment unless adequate market access offers were forthcoming."

As you know, Mr. Chairman, negotiations covering financial services are expected to continue into 1995; we will be monitoring them closely. Also, lest we forget the dramatic impact the ongoing U.S.-Japan "framework" negotiations can have on the success or failure of the negotiations conducted pursuant to the Uruguay Round "Decision on Financial Services." We can be certain that the key countries engaged in the latter talks are watching very carefully to see what kind of market-opening concessions Japan will make by this July under the framework negotiations as they apply to financial services. If Japan makes meaningful offers in the framework, other countries will be hard-pressed not to make similarly adequate commitments in the broader negotiations. Of course, this process can also work in reverse if Japan's offers are not meaningful. Needless to say, we will be monitoring the framework process with intense interest, as well.

In another vital area addressed in the ACTPN report -- Telecommunications -- the NFTC would also concur that "the unwillingness of our trading partners to come forward with liberalizing offers on telecommunications by the conclusion of the Uruguay Round demonstrates that serious asymmetrical market conditions exist." Since these conditions keep U.S. telecommunications services providers at a competitive disadvantage in certain foreign markets, our trading partners will be in no hurry to make worthwhile concessions during the market-liberalizing negotiations for telecommunications services ongoing until April 15. For this reason, we share the ACTPN's recommendation that the U.S. Government "place a high priority on these negotiations and use all available avenues both to maintain their negotiating leverage and to pursue bilateral arrangements."

Mr. Chairman, I believe the bottom line with respect to the new areas addressed in the Uruguay Round is simply this: much important progress was made, but our trade-liberalizing efforts are light years from being complete.

Let me conclude by going back to the earlier issue of other trade provisions pending consideration in the Congress.

Regarding fast-track trade negotiating authority, NFTC members believe in the importance of renewing and preserving a President's ability to negotiate trade agreements under fast-track procedures. For good reason, Mr. Chairman, you have heard time and again that our trading partners would never negotiate with and make meaningful concessions to U.S. negotiators in good faith, if they knew that 535 members of Congress would then have an opportunity to amend agreements resulting from such negotiations. Contrary to what some fast-track critics say, these negotiating procedures actually bring Congress into a formal advisory loop because of the strict consultation mechanisms woven into fast-track statute.

Further, some fail to recognize the utility of fast-track as a device among America's arsenal of provisions designed to compel changes in the practices of our trading partners. Considering that there is no shortage of nations clamoring at the opportunity for a free trade agreement with the United States, the leverage we possess in being able to offer them the benefits of an FTA negotiated under fast-track is no insignificant weapon.

Another matter likely to be addressed is Section 301. Consistent with their commitment to a free market system

unencumbered by quotas, tariffs, and other artificial trade barriers, NFTC members recognize the need for and endorse the use of U.S. trade laws to address the refusal of foreign governments to provide nondiscriminatory market access to U.S. companies. These include application of Section 301 where appropriate and the aggressive pursuit of sectoral negotiations to reduce identifiable trade barriers to foreign markets. It is important that Section 301 remain a viable market-opening tool in the post-Uruguay Round trading environment. We urge the Congress to review "301" to ensure that it is preserved as an option in ongoing efforts to dismantle remaining unfair foreign barriers under the new World Trade Organization framework.

As was the case, however, with specific respect to H.R. 5100 of the 102nd Congress, and is the case generally, the NFTC opposes the use of congressionally-mandated Section 301 cases. It is our judgment that the President of the United States already has adequate executive and statutory authority to negotiate to dismantle practices restricting or burdening our access to our trading partners' markets, and to levy sanctions where such negotiations prove unsuccessful. The discretion accorded the President and/or United States Trade Representative in these matters must not be impinged on.

Concerning one last issue that bears mention at this time, the NFTC has long opposed measures -- legislative or otherwise -- mandating that Japan, or other trading partners for that matter, eliminate and/or reduce their trade surpluses with the United States, or face automatic sanctions. It should not be lost on advocates of such an approach that the U.S. runs its own trade surpluses with other trading partners, notably the European Union and Mexico. If it became U.S. policy to demand that countries running surpluses with us eliminate such surpluses, this would make us vulnerable to similar demands from those trading partners with whom we run surpluses. Although we have problems with Japan, they are not problems that should be resolved by new unilateral legislation.

Mr. Chairman, again I thank you for the opportunity to testify and the National Foreign Trade Council strongly supports your desire to gain approval of the Uruguay Round implementing legislation as expeditiously as possible. The NFTC looks forward to doing whatever we can to achieve this end.

Chairman GIBBONS. Well, thank you, Mr. Samuels, appreciate it. Mr. Black.

**STATEMENT OF EDWARD J. BLACK, CHAIRMAN, PRO TRADE GROUP, AND VICE PRESIDENT AND GENERAL COUNSEL, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

Mr. BLACK. Thank you, Mr. Chairman.

And it is indeed an honor to be before you on these important hearings, and I would like to add my congratulations to you personally for your leadership over the years in trying to fashion an export-oriented trade policy also committed to opening markets at home and abroad.

I am appearing today with two hats: I am chairman of Pro Trade Group and vice president and general counsel of the Computer and Communications Industry Association.

I am accompanied today by our counsel, Bruce Aitken, of the law firm Aitken, Irvin and Lewin. The CCIA is a national trade association of computer and telecommunications companies, manufacturers and service companies. We represent about 190 billion dollars' worth of high-tech industry.

The Pro Trade Group was founded in 1987 by more than 20 nationally known major trade associations and international companies in order to assist with the enactment of the 1988 Trade Act which provided the authority legislation for these negotiations, as well as to follow the round and, ultimately, help to implement or get approval of its implementing legislation. So this is, for us, the final stage of our first major reason for being.

I should start out I think saying with our overall assessment: We are very, very pleased and have to congratulate the administration for bringing to fruition a very long, tedious, difficult process of negotiation. I think the last administration deserves a great deal of credit, but this administration really did bring it together and with the support from the Congress all along, I think it is a great achievement.

We would like to take a quick runthrough of some of the trade policies in this administration and how they interconnect, because we see some parallels: A number of very good, positive actions, but some of which have a chance, here and there, as we think the implementing legislation, of perhaps going slightly off course.

We have to give great credit to the framework structure which was set up with Japan last spring. The NAFTA has succeeded, I think, to the great credit of the country and the administration, and, hopefully, will rebound to the economic and trade benefit of our Nation.

With regard to the framework agreement, we have yet to see how it will work out. I think we are very interested in seeing real results and positive effort come out, but there is a danger.

In the area of China, there was an extension of MFN, but it has a downside and a condition.

In the area of export controls, we saw last year a major initiative by the administration, but it was only a first step and there are several more steps to come, and, frankly, at the moment they are not looking so positive.



With regard to the Uruguay round implementing legislation itself, the overwhelming benefits are without question. There are a few areas, however, where we are concerned that there could be some efforts to do in implementing legislation things which we do not think in fact were contemplated. We would urge—to the greatest extent possible—to keep to a very narrow interpretation and not use this vehicle as an opportunity to do wide far-ranging changes, particularly in the dumping area. We think that would be a mistake. It is a complex area of law and it ought to be dealt with, if it needs to be dealt with, separately and not in this context.

We established a number of years ago our basic goals for the negotiations, and in almost all of these areas saw progress, from intellectual property protection, services, investment, procurement—not quite done there—and dumping. And the overall framework of expanding the GATT coverage, as Mike eloquently went into detail, is tremendously important for a global economy. For the global industries that we represent, it is essential to have a world out there which is predictable, which has some clear rules and has a new and strong institution which we believe will try to enforce those rules.

In the area of intellectual property, I should take an aside because there is a misunderstanding that has grown up. It is essential that we have an effective intellectual property regime around the world. Many, many countries have had no effective means to protect intellectual properties, and I would be in concurrence with a number of others who testified earlier today and their entire testimony, but there is one additional element which does not tend to get mentioned, and it is something frankly that has been raised by a few people that could become an issue in the implementing legislation. It relates to when we are dealing not with underdeveloped countries but with highly developed countries, who have, like ourselves, a complex industry with very different needs in the area of copyright, that we need balance.

We have to remember that the underlying purpose of intellectual property copyright is to promote innovation, and it is not necessarily clear, any more than it is in the area of dumping or anti-trust, that a lot more of one thing that you want is not necessarily good—it may be too much. We may have a situation that if we had overly rigid controls on the ability to do what is legitimate in many areas—which is reverse engineering to get to the underlying idea—that we could in fact go overboard.

The U.S. policy that we worked out with the EC several years ago was a very balanced, reasonable compromise. We think what was done in the round was in fact good language because it did not try to overdetail what is yet an emerging area of law. We would hope that there would be a strong effort to resist trying to micromanage in this area in the process of implementing the round. It is a complex area.

Our courts are divided. Although there seems to be a solid consensus developing, it is still a new area of law and it is not one we should let our foreign agreements dominate and dictate the development of our domestic law.

If I could briefly mention, as I say, dumping is an extremely complex area and I do want not to get into it in great detail, we have some backup material I will submit for the record which will do so.

Chairman GIBBONS. Sure.

Mr. BLACK. But in the process of implementation, we wanted to stress there are seven areas that we think are important to comment on.

One is sunset. I will read them quickly and come back. Sunset, the cost of production calculations, price averaging, liberalizing currency conversions, de minimis standards, standing, the limitation on delays and administrative reviews.

For each of these areas are, we believe—specific responses are appropriate, and should be dealt with in the bill. We think other issues are not within the framework of what was negotiated, and hope that the committee will resist what we know is an exceptional amount of political pressure which has been building up in this area.

I would like to move to a conclusion, Mr. Chairman, but to do one slight digression. There are several areas we know are very important that are being talked about as possible inclusions, and it is difficult to say that we do not want them included, because we think some are useful. But I think to be fair, we do not feel that extraneous matters, to the extent possible, should be included in implementing legislation. I call your attention to Jackson-Vanik changes, which we would greatly support in a vehicle that we would hope would move.

We believe some kind of fast track authority is highly desirable, and may be appropriate here. If there is anything that has proved that the battle we all went through on fast track was worthwhile, it is the NAFTA and the GATT agreements. But with those two exceptions, we think many of the other issues that we have heard discussed as worthy of being considered for this bill ought not to be included.

We think the Uruguay round agreement does represent a very successful conclusion of an ambitious effort to expand the coverage of the GATT. It is a major accomplishment by the administration, a major accomplishment by the Congress which provided the authority and guidance to the administration throughout the process, and we urge you to quickly implement the agreement and to resist the pressure to include extraneous amendments.

Thank you, sir.

[The prepared statement and a supplemental statement follow:]

February 22, 1994

STATEMENT OF EDWARD J. BLACK, CHAIRMAN, PRO TRADE GROUP BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, ON IMPLEMENTATION OF THE URUGUAY ROUND.

Thank you, Mr. Chairman, for the opportunity to appear at these timely and important hearings. I wish to express my long admiration for your leadership in helping to fashion an export-oriented trade policy committed to open markets at home and abroad.

I appear today as Chairman of the Pro Trade Group ("PTG"). As you know, I also am Vice President and General Counsel of the Computer & Communications Industry Association and will have a few special remarks in that capacity.

The PTG was founded in 1987 by more than 20 nationally-known, U.S.-based trade associations and multinationals. It was formed in direct anticipation of the enactment of the 1988 Omnibus Trade Bill. Today, the PTG continues as a pro-active coalition of over 100 U.S.-based trade associations and companies. Our members include U.S. exporters, importers, manufacturers, wholesalers, retail, agricultural, civic, consumer and service organizations and companies whose collective output represents over 60% of the U.S. GNP. Our members actively seek to develop competitive markets and to promote trade. We are committed to expanding, not restricting, trade and promoting policies which achieve that goal and the resultant economic prosperity. We were actively involved in the process that resulted in passage of the Omnibus Trade and Competitiveness Act of 1988, including implementation of sweeping amendments to U.S. trade laws. In that regard, the PTG has continued to provide information and prepare position papers for members of Congress and Administration officials over the past 7 years in an effort to help develop and implement constructive trade laws which serve the many diverse U.S. interests which are affected by such laws and policies.

The positions of the PTG represent a consensus view although individual PTG participants may have varying views on particular issues.

Today, we would like to focus on the following three topics. First, we wish to address Uruguay Round implementation in the context of the Administration's overall trade policy, which we generally endorse. Second, we will address the general principles against which we believe that Uruguay Round implementing legislation should be judged. Third, we will discuss certain aspects of the Uruguay Round itself.

Generally, we feel that the Uruguay Round agreement is a balanced and serviceable agreement, however imperfect, which is reflective of both the emerging themes of the Administration's trade policy and the principles by which the PTG feels that such legislation should be evaluated. We strongly oppose the political effort by some to attempt to, in effect, "reopen the negotiations" by virtue of the implementing legislation. While we recognize that certain aspects of the negotiations are still being completed, we wish to offer our very sincere admiration to the Administration for being able to conclude the Uruguay Round, a goal that eluded the two previous Administrations. We urge that this Subcommittee, and the Congress as a whole, implement, not undermine, this agreement. A background paper which we will submit for the record will discuss certain aspects of the Uruguay Round agreement in much greater detail.



### The Dominant Theme of The Administration's Trade Policy

During its first year, the Clinton/Gore Administration has demonstrated a remarkably consistent approach to the development of international trade policy. Simply put, the Administration has demonstrated a willingness to undertake political risks for the sake of increased U.S. exports, output and employment. This pattern reflects the concentrated economic focus of the campaign and has been demonstrated in the face of a series of controversial issues.

First, last April, the Administration developed a "results oriented" trade policy toward Japan which culminated in the successful negotiation, in July, of the U.S.-Japan Framework Agreement. Obviously, alleged non-compliance with this Agreement has emerged as a highly sensitive political issue in recent weeks. We look forward to the opportunity to testify regarding this and related issues when appropriate hearings are held.

Further, last spring, the Administration resisted the political pressure to reclassify multipurpose vehicles and properly deferred to the decision of the U.S. Court of International Trade.

In June, President Clinton ordered a one-year extension of "Most Favored Nation" status for the People's Republic of China, but only after establishing human rights criteria for continuation of MFN status.

In the face of intense division and debate within both political parties, the Administration strongly pushed for legislative enactment of NAFTA, reflecting a commitment to improve the United States' long term export competitiveness. Ambassador Kantor negotiated labor, environmental and "import surge" side agreements to the U.S.-Canada-Mexico "North American Free Trade Agreement" in order to attempt to accommodate labor and environmental concerns. The Nov. 15, 1993 Congressional passage of NAFTA implementing legislation by a surprisingly wide margin reflected a significant political achievement for the Administration, and, we hope, trade achievement for this nation.

The NAFTA victory electrified the 15 nation APEC Summit in Seattle. The Administration's goal of seeking an evolution of this "discussion" organization reflects an awareness of the growth of economic regionalism (e.g., the European Union). Among other things, it is a counter to the Malaysian proposal for an ASEAN Free Trade Agreement, which would not include U.S. participation.

Earlier this month, following overwhelming Senate support for a resolution calling for normalization with Vietnam, the Administration again risked controversy by removing the embargo on Vietnam. This action frees U.S. firms to compete with their Asian and European competitors on investment and marketing projects. The issue of possible MFN status for Vietnam awaits the final disposition of the MIA issue.

In the fall, the Administration produced the TPCC report which indicated a serious effort to coordinate and energize efforts in various important areas of export policy, particularly export controls where some significant first steps toward comprehensive reform were undertaken. The Administration currently is working on a proposal to overhaul the export control laws. While we are hopeful that necessary sweeping reform will be forthcoming, our concerns are growing that bureaucratic inertial may be winning and an historic opportunity missed.

Finally, on December 15, USTR Mickey Kantor and his colleagues achieved completion of the Uruguay Round agreement to update and expand the GATT trading rules, a major accomplishment. Again, amid controversy and pressure from a variety of industry sources,

the Administration achieved what has been widely acclaimed as a balanced agreement.

#### Criteria for Evaluating Implementing Legislation

In assessing specific trade and investment legislation, we believe that certain criteria and issues are particularly important. Attached is a copy of our September 27, 1993 letter to the President which discusses these in detail. Generally, we believe that such legislation should help to promote an open international trading and investment systems. We oppose attempts to alter the agreement in the guise of "strengthening" it in such areas as antidumping. Further, we believe that the Administration should avoid legislative and regulatory initiatives that run counter to "national treatment" standards for U.S. international obligations.

#### Implementing the Uruguay Round

In 1947, the General Agreement on Tariffs and Trade (GATT) was negotiated to establish uniform rules to promote a more efficient, expanded, and beneficial pattern of world trade. While there is a concern about the effectiveness and coverage of the GATT, including problems involving complex trade disputes, the PTG believes the GATT has had a very beneficial impact on world trade and economic development. We strongly supported efforts in the Uruguay Round to broaden the GATT's scope to deal with today's more complex trading environment and to strengthen its rules and enforcement procedures. The broadening of the GATT to deal with services, agriculture, intellectual property, textiles, investment, procurement, and safeguards and to find more effective enforcement procedures in the face of national sovereignty concerns -- all of these were and are of critical importance to the future of world trade.

Enclosed also is a copy of our October 27, 1989 position paper on our goals for the Uruguay Round. While the results of the Uruguay Round, and of any multilateral trade negotiation, are imperfect, nevertheless, we feel that it represents a remarkable achievement for the Administration. On balance, we feel that it is consistent with the general theme of the Administration's trade policy, and with the principles we espouse.

The PTG has strongly supported the Uruguay Round. We now support the final Agreement which, in balance, we believe will expand trade opportunities for U.S. interests. The following provides an assessment of what we believe the Agreement has achieved, as measured against the goals we articulated 5 years ago.

<u>Agricultural Trade Reform</u>	<u>PTG Goals</u>	<u>Assessment of Results</u>
	The PTG believes that multilateral trade policy reform is urgently needed. Trade-distorting subsidies have resulted in depressed global commodity prices, skewed production patterns, heightened trade tensions and chronic surpluses.	The Agreement extends, improves and further defines the subsidies code. However, there are risks to U.S. interests from the scope of sub-national subsidies now internationally approved and from certain safe harbor and environmental provisions.

	<u>PTG Goals</u>	<u>Assessment of Results</u>
<u>Intellectual Property Protection</u>	The trade-distorting impact of ineffective or non-existent intellectual property protection make obvious the need for a comprehensive mechanism for achieving adequate and effective protection for all forms of intellectual property.	While the implementation period delays the date on which these reforms will be effective, the TRIPS provisions are a major step forward.
<u>Services</u>	The ultimate objective of a GATT services Agreement should be to expand trade and investment in services through a progressive reduction of market barriers in as wide a range of service sectors as possible.	Because services, for the first time, now will be subject to the same international rules that cover trade in goods, the Agreement represents a major achievement. While we regret the incompleteness of the Agreement, we support the continuation of negotiations in the financial area. While the 10 year phase-out and relatively modest tariff reductions delay the ultimate benefits to consumers, nonetheless we support the Agreement's provisions phasing out the MFA.
<u>Textiles Clothing</u>	We called for phasing out the restrictions of the multi-fiber arrangement and other restrictions not coincident with GATT rules and disciplines.	We support the agreement of industrial, developing, and least developed countries to eliminate all non-conforming investment limits, respectively, by 1997-2000 and 2002. This is a significant step forward.
<u>Foreign Direct Investment</u>	The fundamental objective of a GATT agreement should be the elimination of the trade-restricting and trade distorting effects of government investment policies and practices and the negotiation of a Code regulating trade related investment measures was a major PTG priority.	We await the completion of these negotiations on or before 4/15/94.
<u>Extension of the GATT Procurement Code</u>	We support extension of the Code to the "excluded" sectors, particularly where U.S. industry is particularly competitive, e.g., telecommunications, transportation, water, energy and services.	
<u>SAFEGUARDS</u>	We support negotiation of a safeguards Code which would set up a "parallel track" to Article XIX and which would reduce the incentive to evasion which characterizes the present rule, but still maintains same costs to the countries that would would	We support the elimination of VRAs, and other "gray area measures and await identification of exceptions. Generally, we
<u>Antidumping</u>		



<p>Antidumping</p>	<p>which would reduce the incentive to evasion which characterizes the present rule, but still maintains some costs to the countries that would have to report to it.</p> <p>The PTG position was detailed in a number of submissions to U.S. negotiators. Generally, we supported the Dunkel draft provisions.</p>	<p>exceptions. Generally, we support the procedural reforms but feel that certain ambiguities should be clarified.</p> <p>We are disappointed at the elimination of certain reforms in the final Agreement, but recognize the compromises necessary in Geneva. See our detailed comments before.</p>
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The PTG was extraordinarily active in supporting the renewal of fast track and we closely monitored and witnessed the closing sessions of the Geneva negotiations. We believe that the complexity of the negotiations and their dynamics make it obvious that the Agreement should be strictly construed in terms of deciding which issues must be addressed in implementing legislation. To open up the legislation to significant changes would invite a host of other countries to do the same, threatening the Agreement. We believe that the U.S. trade laws are more than adequate to redress trade disputes. We do not believe that limitations of these laws, whatever their deficiencies, justify the possible ultimate failure of the Uruguay Round by attempting to add on trade law revisions beyond the scope of the Agreement itself. Furthermore, we strongly support quick implementation. Consequently, we oppose the notion that consideration of UR implementing legislation should be held hostage to consideration of more general trade legislation.

Among other reasons for quick implementation, we believe that the fast track expedited review process does not lend itself to wholesale amendment of the extremely complex and technical antidumping law, in particular relating to issues that are not part of the Agreement and were not discussed in full during the negotiating process. Because dumping issues are being raised by some others in the testimony we want to comment on them briefly.

There are only seven antidumping issues which the implementing bill should address. These issues, as well as our specific response to attempts to include extraneous amendments to the antidumping law, are discussed in full in the background paper we will submit for the record.

1. Sunset: U.S. law should be amended to terminate orders automatically after five years unless the authorities conclude after an investigation that the duty is necessary to prevent the continuation or recurrence of injury. No presumptions should be permitted concerning whether the continuation/recurrence of dumping/injury is likely to recur. The process of considering existing orders should commence immediately, beginning with the oldest orders, so that determinations can be made as soon as the Agreement is implemented.

2. Cost of Production Calculations: U.S. law should be amended to use actual data in the calculation of the cost of production, as opposed to artificial statutory minima. In addition, start-up costs should be taken into account in assessing whether home market sales have been made below cost.

3. Price Averaging: In order to achieve a fair, apples-to-apples comparison of export and home market prices, the law

should be amended so that it is presumed that average-to-average comparisons will be made, unless a clear pattern of substantial spot dumping is found. Spot dumping should then be defined so that exporters have specific guidance allowing them to make business decisions.

4. Liberalizing Currency Conversion: Companies should not be penalized for rapidly changing exchange rates over which they have no control. Rolling monthly average exchange rates for a period of at least ninety days should be used to allow exporters a reasonable time to modify prices to reflect changes in exchange rates. In addition, Commerce should take into account currency hedging and other normal business practices for compensating for currency fluctuations.

5. De Minimis Standards: U.S. practice should reflect the new 2% de minimis standard negotiated in the Agreement.

6. Standing: The strict standing requirements of the Agreement should be implemented.

7. Limitation on Delays in Administrative Reviews: Strict statutory deadlines should be imposed for the final assessment of antidumping duties. The Agreement recognizes that exporters and importers should not bear the unfair burden and uncertainty caused by delays. The Commerce Department's record is dismal in this regard.

#### CONCLUSION

The Uruguay Round Agreement represents the successful conclusion of an ambitious effort to expand the coverage and effectiveness of the GATT system. It also reflects a major accomplishment in the Administration's pursuit of an export-oriented trade policy. We urge the Congress to quickly implement the Agreement and to resist pressures to include extraneous amendments in the implementing legislation.

**STATEMENT OF THE PRO TRADE GROUP  
IN CONNECTION WITH HEARINGS ON THE IMPLEMENTATION OF THE URUGUAY  
ROUND OF GATT**

**INTRODUCTION**

The PTG was founded in 1987 by more than 20 nationally-known, U.S.-based trade associations and multinationals. It was formed in direct anticipation of the enactment of the 1988 Omnibus Trade Bill. The PTG continues as a pro-active coalition of over 100 U.S.-based trade associations and companies. Our members include U.S. exporters, importers, manufacturers, wholesalers, retailers, agricultural, civic, consumer and service organizations and companies whose collective output represents over 60% of the U.S. GNP. Our members actively seek to develop competitive markets and to promote trade. We are committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the process that resulted in passage of the Omnibus Trade and Competitiveness Act of 1988, including implementation of sweeping amendments to U.S. trade laws. In that regard, the PTG has continued to provide information and prepare position papers for members of Congress and Administration officials over the past 7 years in an effort to help develop and implement constructive trade laws which serve the many diverse U.S. interests which are affected by such laws and policies.

The positions of the PTG represent a consensus view although individual PTG participants may have varying views on particular issues.

We will focus on the following three topics. First, Uruguay Round implementation will be addressed in the context of the Administration's overall trade policy, which we generally endorse. Second, we will address the general principles against which we believe that Uruguay Round implementing legislation should be judged. Third, we will discuss certain aspects of the Uruguay Round itself, focusing on the antidumping provisions of the agreement.

Generally, we feel that the Uruguay Round agreement is a balanced and serviceable agreement, however imperfect, which is reflective of both the emerging themes of the Administration's trade policy and the principles by which the PTG feels that such legislation should be evaluated. We strongly oppose the political effort by some to attempt to, in effect, "reopen the negotiations" by virtue of the implementing legislation. While we recognize that certain aspects of the negotiations are still being completed, we wish to offer our very sincere admiration to the Administration for being able to conclude the Uruguay Round, a goal that eluded the two previous Administrations. We urge that this Subcommittee, and the Congress as a whole, implement, not undermine, this agreement.

**I. THE DOMINANT THEME OF THE ADMINISTRATION'S TRADE POLICY**

During its first year, the Clinton/Gore Administration has demonstrated a remarkably consistent approach to the development of international trade policy. Simply put, the Administration has demonstrated a willingness to undertake political risks for the sake of increased U.S. exports, output and employment. This pattern reflects the concentrated economic focus of the campaign and has been demonstrated in the face of a series of controversial issues.

**A. U.S.-Japan Trade Policy**

First, last April, the Administration developed a "results oriented" trade policy toward Japan which culminated in the successful negotiation, in July, of the U.S.-Japan Framework Agreement. Obviously, alleged non-compliance with this Agreement has emerged as a highly sensitive political issue in recent weeks. We look forward to the opportunity to testify regarding this and related issues when appropriate hearings are held.



## B. Classification of Multipurpose Vehicles

Further, last spring, the Administration resisted the political pressure to reclassify multipurpose vehicles and properly deferred to the decision of the U.S. Court of International Trade.

## C. "Most Favored Nation" Status for the PRC

In June, President Clinton ordered a one-year extension of "Most Favored Nation" status for the People's Republic of China, but only after establishing human rights criteria for continuation of MFN status.

## D. NAFTA

In the face of intense division and debate within both political parties, the Administration strongly pushed for legislative enactment of NAFTA, reflecting a commitment to improve the United States' long term export competitiveness. Ambassador Kantor negotiated labor, environmental and "import surge" side agreements to the NAFTA in order to attempt to accommodate labor and environmental concerns. The Nov. 15, 1993, Congressional passage of NAFTA implementing legislation by a surprisingly wide margin reflected a significant political achievement for the Administration, and, we hope, a trade achievement for the nation.

## E. APEC

The NAFTA victory electrified the 15 nation APEC Summit in Seattle. The Administration's goal of seeking an evolution of this "discussion" organization reflects an awareness of the growth of economic regionalism (e.g., the European Union). Among other things, it is a counter to the Malaysian proposal for an ASEAN Free Trade Agreement, which would not include U.S. participation.

## F. Normalization of U.S.-Vietnam Relations

In February, following overwhelming Senate support for a resolution calling for normalization with Vietnam, the Administration again risked controversy by removing the embargo on Vietnam. This action frees U.S. firms to compete with their Asian and European competitors on investment and marketing projects. The issue of possible MFN status for Vietnam awaits the final disposition of the MIA issue.

## G. Export Control Reform

In the fall, the Administration produced the TPCC report which indicated a serious effort to coordinate and energize efforts in various important areas of export policy, particularly export controls where some significant first steps toward comprehensive reform were undertaken. The Administration and the Congress currently are working on an overhaul of the export control laws. While we are hopeful that necessary sweeping reform will be forthcoming, our concerns are growing that bureaucratic inertia may be winning and an historic opportunity missed.

## H. Uruguay Round Agreement

Finally, on December 15, USTR Mickey Kantor and his colleagues achieved completion of the Uruguay Round agreement to update and expand the GATT trading rules, a major accomplishment. Again, amid controversy and pressure from a variety of industry sources, the Administration achieved what has been widely acclaimed as a balanced agreement.

# II. CRITERIA FOR EVALUATING IMPLEMENTING LEGISLATION

In assessing specific trade and investment legislation, we

believe that certain criteria and issues are particularly important. Generally, we believe that such legislation should help to promote an open international trading and investment system. We oppose attempts to alter the agreement in the guise of "strengthening" it in such areas as antidumping.

A. Increased Market Access Without Automaticity

As discussed in our September 27, 1993 letter to the President, we urge that the Administration avoid the advocacy of automatic reciprocity regimes as a principal means of dealing with market access problems. The Pro Trade Group believes that increasing market access is a fundamentally important goal and strongly supports the Administration's market-opening initiatives. We have sufficient confidence in the Administration's commitment to this goal that we believe that initiatives such as legislation to render the Section 301 market access/retaliation authority more automatic are ill advised and potentially counterproductive in that they would lessen the Administration's discretion and effectiveness.

B. Preserve "National Treatment" Standards

Further, we believe that the Administration should avoid legislative and regulatory initiatives that run counter to "national treatment" standards for U.S. international obligations and we believe that the principle of national treatment should be reaffirmed in multilateral negotiations. For example, we believe it would be short-sighted to attempt to simplistically redefine standards for achieving U.S. corporate status based on ownership percentage (rather than location) and placing local content requirements on U.S. products. We similarly deplore proposals such as the House-passed provision in H.R. 820 establishing what to us are unacceptable standards for defining a U.S. company.

C. Traditional Customs Criteria

Also, consideration of possible changes in the criteria according to which customs classification should be achieved, e.g., classification of multipurpose passenger vehicles, should be based on past practice, and an understanding of the marketplace, rather than on current political fashion.

D. Avoid Politicization of MFN Status

Furthermore, we oppose the politicization of decisions to alter or deny MFN status.

III. IMPLEMENTING THE URUGUAY ROUND

In 1947, the General Agreement on Tariffs and Trade (GATT) was negotiated to establish uniform rules to promote a more efficient, expanded, and beneficial pattern of world trade. While there is a concern about the effectiveness and coverage of the GATT, including problems involving complex trade disputes, the PTG believes the GATT has had a very beneficial impact on world trade and economic development. We strongly supported efforts in the Uruguay Round to broaden the GATT's scope to deal with today's more complex trading environment and to strengthen its rules and enforcement procedures. The broadening of the GATT to deal with services, agriculture, intellectual property, textiles, investment, procurement, and safeguards, and to find more effective enforcement procedures in the face of national sovereignty concerns -- all of these were and are of critical importance to the future of world trade.

Issues of particular concern follow.

A. Agricultural Trade Reform

1. PTG Goals

The Pro Trade Group has long believed in the need for multilateral trade policy reform in agriculture. Trade-distorting subsidies have resulted in depressed global commodity prices, skewed production patterns, heightened trade tensions and chronic surpluses. Over time, these subsidies need to continue to be brought under GATT disciplines so that, while the legitimate desire of nations to support their farm sectors is respected, international agriculture trade can proceed in a more efficient manner. The principles of comparative advantage and open trade, not an artificial quest for self-sufficiency, should govern nations' decisions to import and export.

The Pro Trade Group believes agricultural policies should be more responsive to international market signals in order to liberalize trade, and that support and protection should be provided in a less trade-distorted manner. The Pro Trade Group supports the Uruguay Round's long-term objectives of establishing market-oriented agricultural trading system including a reform process to negotiate commitments on support and protection practices that distort trade, and the establishment of strengthened, efficient and more effective GATT rules and disciplines. Consistent with this objective, the Pro Trade Group supports the Uruguay Round Agreement's objective of multilateral and simultaneous reduction in those agricultural subsidies which actually distort trade.

## 2. Assessment of Results

The Agreement extends, improves and further defines the subsidies code. However, there are risks to U.S. interests from the scope of sub-national subsidies, now internationally approved, and from certain safe harbor and environmental provisions.

### B. Intellectual Property Protection

#### 1. PTG Goals

Protection for innovation and creative expression is vital to the trading interests of all countries. The trade distorting impacts of ineffective or nonexistent intellectual property protection makes a comprehensive mechanism for achieving adequate and effective protection imperative for all forms of intellectual property. We supported adoption of mechanism that establishes adequate standards and principles which assure the availability, scope and use of protected rights. Such a mechanism should provide a means for effective and appropriate enforcement of such rights, effective and expeditious procedures for preventing and settling disputes and transitional arrangements which assure early and full participation in the beneficial results in the Round.

To gain adherence by the greatest number of governments possible, the benefits that developing countries gain from protection of intellectual property rights should be emphasized. It is preferable to gain subscription to a rigorous mechanism, effective and comprehensive protection, rather than dilute the mechanism to accommodate calls for a lower order of protection of intellectual property rights.

## 2. Assessment of Results

While the implementation period delays the date on which these reforms will be effective, the TRIPS provisions are a major step forward.

### C. Services

#### 1. PTG Goals

The scope of the GATT should be further broadened to include



principles and sector-specific rules for international trade in services. The ultimate objective of a GATT services agreement has been to expand trade and investment in services through a progressive reduction of market barriers in as wide a range of service sectors as possible.

Our goal has been to seek definition of "national-treatment" to include access to local distribution networks; firms and personnel; access to customers; access to licenses; and the right to use brand names. Very early in the process, we took the position that the framework should apply to the cross-border movement of services as well as to the establishment of foreign branches and subsidies.

The Pro Trade Group has endorsed U.S. efforts to obtain discipline on state-sanctioned monopolies and subsidies. We took the position that signatories should be permitted to create monopolies, but that the agreement should require monopolies to provide their services to foreign users on a non-discriminatory basis. In addition, we supported appropriate compensation to affected signatories when a government takes action to transform the provision of a service from a competitive to a monopoly situation.

Further, we took the position that individual agreements on particular sectors should be concluded on a conditional MFN basis, i.e., benefits would only be extended to those who signed the individual sectoral agreements. In the interests of global economic expansion and trade liberalization, we believed that the United States should support the creation of the maximum number of individual sectoral agreements possible, consistent with U.S. interests.

Finally, we took the position that the Services agreement should include consultation and dispute settlement provisions which take into account improvements in dispute settlement now under negotiation.

## 2. Assessment of Results

Because services, for the first time, now will be subject to the same international rules that cover trade in goods, the Agreement represents a major achievement. While we regret the incompleteness of the Agreement, we support the continuation of negotiations in the financial area.

### D. Textiles and Clothing

#### 1. PTG Goals

For almost thirty years, international trade in textiles and clothing has been managed by multilateral agreements which are exceptions to GATT trade principles. Our fundamental goal, early on, was to achieve a phase-out of the restrictions of the Multifiber Arrangement and other restrictions not coincident with GATT rules and disciplines.

The Uruguay Round Agreement integrates the textile and apparel sector with the world trading system progressively through the phase out of textile and apparel quotas in three stages over a ten year transition period and through growth provisions for products subject to quotas during the transition.

To implement this integration meaningfully, as called for under the Agreement, the decisions for each phase of the integration should be made at the beginning of the 10 year transition, not as each stage falls due. These decisions should be made through a transparent public process under the Administrative Procedures Act, including economic analyses by the International

Trade Commission as an expert independent body, with opportunities for all interested parties to make submissions, attend hearings, and provide advice. Also, to ensure a progressive transition, cuts in future quota growth should not be used as a mechanism to punish textile-exporting countries for concerns in areas of the agreement.

Trade policy decisions concerning the use of the transitional safeguards for textile and apparel should be subject to public process and consultation with all interested parties, such as those provided in Section 201 for the Trade Act of 1974, as amended. The agreements' "market disruption" standard should be written into U.S. law. Trade policy decisions on exercising the Dispute Settlement provisions relating to textiles and apparel also should be subject to full consultation with interested parties and public process.

## 2. Assessment of Results

While the 10 year phase-out and relatively modest tariff reductions delay the ultimate benefits to consumers, nonetheless we support the Agreement's provisions phasing out the MFA.

## E. Foreign Direct Investment

### 1. PTG Goals

Foreign direct investment stimulates economic growth and expands international trade. Investment flows and activities, both inward and outward, are crucial to the economies of both developed and developing countries. An open investment system contributes to the expansion of international trade by allowing investors to take advantage of worldwide market opportunities. Foreign direct investment is especially important in certain manufacturing sectors, and in services related to manufacturing. For example, the establishment of foreign distribution and service centers is often a precondition to effective marketing activities abroad.

Our position was that the fundamental objective of a GATT agreement should be the elimination of the trade-restricting and trade-distorting effects of government investment policies and practices.

## 2. Assessment of Results

We support the agreement of industrial, developing, and least developed countries to eliminate all non-conforming investment limits, respectively, by 1997-2000 and 2002. This is a significant step forward.

## F. Extension of The GATT Procurement Code

### 1. PTG Goals

The Tokyo Round produced a GATT Government Procurement Code that committed the signatory countries to observe a set of rules to assure transparency and non-discrimination in their government procurement process. However, only part of the procurement was covered by limiting the commitment in each signatory country on a basis of reciprocity to specific agencies and types of products. Procurement of telecommunications, transportation, water and energy, and the procurement of services, other than those incidental to the procurement of goods, have been excluded.

The PTG took the position that the United States should pursue vigorously the extension of the GATT Procurement Code to the "excluded" sectors, where U.S. industry is particularly competitive. Furthermore, these were the sectors that were going to be covered by "directives" of the European Community, with their

European content requirements. Implementation of these "directives" puts U.S. suppliers at a disadvantage. We believe the GATT negotiations should aim at covering telecommunications, transportation, water and energy, as well as the procurement of services under the non-discriminatory GATT government procurement code.

## 2. Assessment of Results

Completion of these negotiations were postponed until 4/15/94. We will analyze the results and report further.

### G. Safeguards

#### 1. PTG Goals

The position of the Pro Trade Group has been that the long term goal of the United States should be to establish an Article XIX system which reduces the incentive to evasion that characterizes the present rule but still maintains some costs to the countries which have to resort to it. We supported negotiation of a new Safeguard Code during the Uruguay Round which would set up a "parallel track" to Article XIX. We believed that with such a Code in place, a country seeking temporary relief from imports would have the choice of two possible relief routes: either the traditional Article XIX, which authorizes freedom of action but exposes the country taking it to possible retaliation; or action pursuant to new Code as regards to trade action affecting participants in Code.

Under the current system, GATT Article XIX allows a country to suspend obligations under the General Agreement when imports of a specific product cause or threaten to cause serious injury to its domestic producers. Countries supplying that product are allowed compensation or, when compensation is not offered or deemed inadequate, retaliation. Most observers agree that this system has not worked. Countries have imposed or encouraged restrictions on their imports without following the procedures of Article XIX. In fact, the only significant users of the Article XIX provisions have been the United States, Canada and Australia.

Accordingly, the PTG took the position that these negotiations should include a number of improvements. Our position was that if a country proposes to take action against a country which has not acceded to the Code, the latter's rights under Article XIX remain intact. Similarly, while a country which is not a Code signatory does not give up any rights conferred by the GATT, it also would not acquire rights (such as those described in point 3) unless it were a Code participant.

We believed that the negotiations should have two collateral goals. First, we sought to discourage the use of safeguards taken outside the GATT processes, and especially those which tend to cartelize trade or have effects on third countries without their participation. Further, we took the position the Code must also be sufficiently attractive to countries who have in the past resorted to restrictive actions outside the GATT framework. Second, we sought to encourage greater use of GATT mechanisms by advanced developing countries. We believed that the assurance of time-limited restraints and the ability to acquire "third party" rights not now conferred, along with GATT oversight, would be a new advantage over the current system which lacks sufficient discipline.

## 2. Assessment of Results

We support the elimination of VRAs, and other "gray" area measures and await identification of exceptions. Generally, we support the procedural reforms but feel that certain ambiguities should be clarified.



## H. Antidumping

### 1. PTG Goals

We believe that the Pro Trade Group position was detailed in a number of positions to U.S. negotiators. Generally, we supported the Dunkel Draft's provisions. The following provides a detailed exposition of our memos about the negotiated provisions and our concerns regarding implementation into U.S. law. The Antidumping Agreement's provisions go a long way to meeting the dual U.S. interests of improving the fairness and transparency of the antidumping scheme while maintaining strong and effective laws. In this regard, the Agreement recognizes that enabling compliance with these laws is another way of deterring dumping, and that changes in the Code and national laws aimed at fairness and transparency may allow greater transparency of these laws without weakening the remedy envisaged by the GATT.

The challenge for today is faithful implementation of the Agreement's provisions. We must keep in mind the negotiators' intent in drafting the provisions and amend U.S. law to carry out that intent.

At the same time, it is critical that implementation be limited to amending only those portions of the U.S. antidumping law that are not in conformity with the Agreement. Accordingly, we strongly believe that permitting additional antidumping provisions to enter into the implementing the bill would be a serious mistake, for two reasons. First, opening up the U.S. antidumping law at this point would undermine the U.S. effort to obtain faithful implementation by our trading partners. In short, it would constitute an open and direct invitation to the EC, Mexico, Canada, and other countries to do likewise. The results could be devastating for our exporters who do business with these countries. Second, the fast track expedited review process does not lend itself to wholesale amendment of the extremely complex and technical and already well-developed antidumping law. in particular relating to extraneous issues that are not part of the Agreement and were not voted in full during the negotiating process. This is especially the case at a time in which the relevant Committees will be considering major legislation concerning other policy and legal areas.

Accordingly, we believe that there are seven principal areas in which the Agreement clearly calls for a change in U.S. law. These issues, which are discussed in detail below, relate to sunset, the use of actual profit and selling, general and administrative expenses in cost of production calculations, the use of price averaging, liberalization of currency conversion, increase of the de minimis standard, standing, and limitation on delays in administrative reviews.

There are certain additional changes to U.S. law that would improve the trade laws. One of the most obvious changes would be to permit a "short supply" exemption from antidumping duties in circumstances in which the product subject to an order is not available from domestic sources. Because the antidumping law currently contains no provision to relieve an importer from the burden of paying antidumping duties in such circumstances, U.S. industrial users that need these products are severely prejudiced while domestic producers do not benefit because they are unable to supply the demand. A balanced and carefully drafted "short supply" provision would redress this imbalance by allowing U.S. companies access to vital raw materials and components without undermining the effectiveness of antidumping orders. It would also implement Article 9 of the Agreement by imposing only those duties needed to "remove the injury to the domestic industry."

Our guiding principle, however, remains to support a "clean" GATT implementation bill without extraneous provisions. Under an

absolutely minimalist bill, short supply would not be necessary to conform U.S. law to the requirements of the Agreement. However, if additional provisions are to be added to the bare minimum, short supply should be at the top of the list.

Finally, it may be possible in many instances to conform to the obligations of the Agreement without statutory amendment if Commerce merely changes its practice to reflect the Agreement's obligations. However, we note that although the United States antidumping regime is widely viewed as transparent, the U.S. system in fact has a way to go in achieving true transparency. In this regard, it is Commerce's practice not to issue timely regulations concerning new approaches that it will take on generally applicable issues but instead to rely on the investigation process. Under this system, a new Commerce practice may not be established except through a fact-specific determination that may not give guidance as to how these issues would be addressed in the future and did not provide an opportunity to parties outside of the case to comment.

Accordingly, we propose that Congress develop legislative history stating that issues of general application left to Commerce's discretion should be resolved by a rulemaking, instead of the vagaries of the case process, to be completed within one year of the Agreement's implementation. Instances in which changes in practice may be sufficient are set forth below in detail in the discussion of specific issues.

1. Amendments That Should Be Made to U.S. Law or Practice to Implement U.S. Obligations Faithfully

The following are the principal areas in which the Antidumping Agreement clearly calls for a change to the U.S. antidumping law or to U.S. practice:

- a. Sunset: Article 11.3 of the Agreement provides for termination of orders after five years unless expiration is likely to lead to continuation or recurrence of dumping and injury. Accordingly, U.S. law should be amended to terminate orders automatically after five years unless the authorities conclude after an investigation that the duty is necessary to prevent the continuation or recurrence of dumping and injury.

Some protectionist interests have suggested the inclusion of presumptions, through which the continuation or recurrence of dumping and injury is presumed. Such presumptions are contrary to the Agreement's placement of the burden of coming forward with evidence squarely on the petitioner or the administering authority to continue the order after the five-year period. U.S. law must recognize that under the Agreement, the status quo must change -- it must be made more difficult to keep an order in effect after five years than it is now.

Finally, the process of considering existing orders should commence immediately, beginning with the oldest orders, so that determinations can be made as soon as the Agreement is implemented. There is simply no basis in the Agreement for permitting orders which have already been in effect for five years to continue in effect once the Agreement is implemented without establishing the continuation or recurrence of dumping and injury.

- b. Cost of Production Calculations: Article 2.2.1.1 of the Agreement requires that costs, including selling, general, and administrative expenses and profits, be calculated on the basis of actual costs. In addition, the Agreement mandates that costs be adjusted to take start-up costs into account for purposes of determining whether home market sales have been made below the cost of production.

Accordingly, 19 U.S.C. § 1677b(e)(1)(B) should be amended to use actual data in the calculation of the cost of production, rather than artificial statutory minima. In addition, start-up costs should be taken into account in assessing whether home market sales have been made below cost.

No further changes should be made to U.S. law, especially changes recommended by protectionist interests which would permit Commerce: (1) to choose an alternative to actual profit which results in the "greatest" amount of profit; (2) to ignore the Agreement's provision that sales below cost should be disregarded if made over an extended period; and (3) to not permit the use of actual profits where constructed value is used in lieu of sales disregarded as below cost. These changes are simply not permitted under the Agreement.

- c. Price Averaging: Article 2.4.2 of the Agreement provides that the existence of dumping margins is to be established on the basis of a comparison of a weighted average normal value with a weighted average of all comparable export transactions, or by a comparison of normal value and export prices on a transaction-by-transaction basis. A weighted average normal value may be compared with individual export transactions if the authorities find a "pattern of export prices which differ significantly" among different purchasers, regions, or time periods, and if an explanation is provided why such differences cannot be taken into account in an apples-to-apples comparison.

Accordingly, Commerce's current practice of normally comparing weighted average normal value to transaction-specific export prices is contrary to the Agreement. In order to achieve a fair, apples-to-apples comparison of export and home market prices, the law should be amended so that it is presumed that average-to-average comparisons will be made for both investigations and reviews, unless a clear pattern of substantial spot dumping is found. Spot dumping should then be defined so that exporters have specific guidance allowing them to make business decisions. The mere allegation of spot dumping should be insufficient to shift to the respondent the burden of demonstrating that averaging is appropriate. Finally, home market sales should not be rejected simply because a product is in the start-up phase.

At the very least, the legislative history and the Statement of Administrative Action should reflect the view that average-to-average comparisons should be made for both investigations and reviews unless a clear pattern of spot dumping is proven.

- d. Liberalizing Currency Conversion: Article 2.4.1 of the Agreement clearly establishes that companies should not be penalized for rapid exchange rates changes over which they have no control, and the authorities must allow exporters at least sixty days to have adjusted their export prices to reflect sustained movements during the POI.

Accordingly, rolling monthly average exchange rates for a ninety-day period should be used to allow exporters a reasonable time to modify prices to reflect changes in exchange rates. In addition, Commerce should take into account currency hedging and other normal business practices for compensating for currency fluctuations, as the Agreement mandates.

Even if this change is not made to the antidumping statute, a message should be sent to Commerce as part of the legislative history or Statement of Administrative Action that such a change should be implemented as part of Commerce practice.

- e. De Minimis Standards: Article 5.8 of the Agreement



provides that cases involving dumping margins of less than two percent are to be immediately terminated because such margins are de minimis. Accordingly, U.S. practice should reflect the new de minimis standards negotiated in the Agreement, and the legislative history to the implementing bill should make clear Commerce's obligation to amend its regulations in this regard. In addition, the new standards should apply to both investigations and reviews, as the Agreement makes no distinction between these proceedings for this purpose.

- f. Standing: Article 5.4 of the Agreement provides that petitioners have standing if the petition is supported by domestic producers whose collective output constitutes more than fifty percent of total production of the like product produced by the domestic industry expressing support or opposition. However, petitioners would not have standing if producers expressly supporting petition account for less than 25 percent of production.

This strict, two-part standing test should be implemented in the U.S. statute. Alternatively, the standing test could be implemented by Commerce regulation, but if so, the legislative history and Statement of Administrative Action should reflect such an intent.

- g. Limitation on Delays in Administrative Reviews: Article 9.3.1 of the Agreement amends the Code to state that reviews are to be carried out "expeditiously and shall normally be concluded within twelve months of the date of initiation of the review."

Under current U.S. practice, reviews more often than not are delayed considerably beyond the twelve-month time frame provided under 19 U.S.C. § 1675(a)(1). Based on the terms of the Agreement, such a practice should no longer be tolerated by Congress. Accordingly, the legislative history should reflect Congress' dissatisfaction with Commerce's practice, and the Statement of Administrative Action should indicate the Administration's commitment to improving its performance.

## 2. Amendments That Should Not Be Made to U.S. Law or Practice

As noted above, we are adamantly opposed to efforts to amend the U.S. trade statutes or practice to cover issues for which amendment is not made strictly necessary by the signing of the Agreement. Described below are among the particular efforts which we find most objectionable of all of the proposals floated. We will comment on other proposals at a later time to the extent that they are being considered seriously.

### a. Commerce Department Determination of Dumping

- i. Circumvention of Antidumping Orders: The negotiators agreed to strike the Dunkel draft's language to extend an order to cover parts and components not covered by that order originally, without a dumping or injury investigation. As a result, the Agreement contains no authorization for circumvention determinations, especially if they would extend to parts and components manufactured by entities in third countries.

Accordingly, we are adamantly opposed to any attempt to amend U.S. law to expand the instances in which an order can be extended to cover parts and components from third countries. Such an expansion is strictly GATT-illegal because it would impose duties on parts and components from countries not subject to an injury

finding.

- ii. Compensation to Injured Industries: The Agreement contains no authority permitting the administering authority to compensate industries injured by dumping. In fact, such a provision would mark a dramatic departure from the GATT-sanctioned penalty of offsetting duties by instead providing damages and private remedies for dumping. Accordingly, U.S. law should not be amended to permit compensation because it would encourage U.S. industries to bring often frivolous cases, harassing exporters and foreign producers. The benefits to petitioners for successfully bringing an investigation under current law are ample: petitioners generally enjoy greater market share and increased domestic prices.
- iii. Exporter Sales Price ("ESP") Methodology: We are adamantly opposed to the effort being made by protectionist interests to deduct profit from U.S. price for sales through an importer and to eliminate current law's offset of indirect selling expenses from home market price.

Such an attempt to modify the ESP deduction or offset would result in unfair treatment of sales through related exporters because an apples-to-apples comparison of export price to normal value would not be made. However, Article 2.4 of the Agreement recognizes the importance of price comparability. In addition, such a provision would conflict with U.S. transfer pricing rules. In short, if a company adjusted its transfer prices in order to avoid dumping, it would violate tax rules requiring reporting of income on an arm's length basis, resulting in likely double taxation and adverse secondary tax consequences.

While the practice in the European Union is to deduct related party profit from the export price, this provides no justification for implementing a similar provision into U.S. law because of the significant differences between the two antidumping laws. For example, the EU does not impose antidumping duties in the amount of the dumping margin calculated, but only up to the amount necessary to offset the injury experienced by the domestic industry. Accordingly, application of provisions that inflate the dumping margin, such as the related party profit rule, quite often have little or no practical effect on the amount of duties assessed. In any event, the EU related party profit deduction from export price is currently the subject of a GATT challenge on the grounds that the failure to deduct profit from foreign market value results in asymmetrical comparisons. The United States should not now place itself in jeopardy of being challenged on the same basis. Indeed, the United States should join in the call for the EU to revise its practice.

- iv. Penalties for Repeat Dumping: The Agreement does not contain any authorization for the imposition of penalties on companies which have been the subject of multiple antidumping determinations. Accordingly, U.S. law should not be amended to permit such penalties. At the outset, such a provision would treat dumping in a punitive manner. Instead, the correction of dumping is to be considered remedial. In addition, it is premature to consider penalties for repeat dumping because national laws do not reflect transparency and elements of certain basic fairness which would allow companies to comply with the antidumping rules embodied in the GATT. Of course, the Agreement goes a long way in ensuring that these basic principles be adopted, but until they

are implemented and a history of their application has developed, it is simply too soon to impose such penalties.

- v. Reimbursement of Antidumping Duties and "Duty as Cost": U.S. law should not be amended to require that antidumping duties be deducted from resale price if the importer or reseller is related to the foreign exporter. Such a change is not made necessary by the Agreement and is not supportable as a matter of policy. Moreover, we oppose the establishment of presumptions that a related party importer is being reimbursed for duties by its parent manufacturer in order to fulfill the Agreement's requirement that a deduction of the duty from export price be taken unless the exporter provides "conclusive evidence" that reimbursement has not occurred and that the resale price reflects the duty. Such presumptions would go beyond the Agreement's requirements and would unfairly penalize such parties in contravention of the Agreement. Indeed, the provision would penalize companies merely because they are related. In any event, there are severe calculation difficulties associated with performing such calculations as certain protectionist interests are suggesting.

Moreover, the methods of testing and remedying alleged duty reimbursement being advocated by certain protectionist interests would impose undue administrative burdens on Commerce and unfair treatment on related party importers. In this regard, certain protectionist interests would deem as disguised duty reimbursement the myriad of legitimate intercorporate transactions in which multinationals of all nationalities engage. Such a test not only would penalize related party importers unfairly, it also would force Commerce to undertake the burdensome task of differentiating between, for example, a legitimate capital contribution and duty reimbursement.

b. International Trade Commission Determination of Injury

- vi. Captive Production: Article 3.4 of the Agreement states that the authorities are to examine, inter alia, output, market share, productivity, and utilization of capacity. It does not authorize limiting "domestic production" only to production destined for the merchant market and excluding the captive market production. However, in a reaction to a recent ITC negative determination concerning the steel industry, various protectionist interests are supporting such an amendment. The impact would be to unfairly and artificially increase import penetration in a manner that is GATT-illegal. Instead, of course, all production of the domestic industry should be taken into account as relevant to the determination of whether that industry is injured by subject imports.
- vii. Impact of Petition and Post-Filing Trends: Protectionist interests also support permitting the ITC: (1) to disregard post-initiation changes in industry trends, including decreases in import volume, in evaluating price and volume effect; and (2) to ignore post-filing changes in rendering threat determinations if trends prior to the time of filing would support an affirmative determination. These provisions would make it



easier to find injury if the industry's condition improved at end of the investigation.

Such language, however, is not authorized by the Agreement, which states that a determination of injury is to be based on "positive evidence" (Art. 3.1). Indeed, this language would strip the Commission of the ability to investigate whether the positive trends are the result of a true upturn in the industry's health or whether they are merely result of the filing of the petition. The provision assumes that post-initiation positive indicators are always the latter, but the Commission should be free to make this determination on a case-by-case basis.

- iii." Continuing Effects" Injury Test: In addition, other one-sided efforts are underway to permit the ITC to base an affirmative injury finding on the continuing effects of imports entered prior to a final determination, even if imports at time of the final determination are not causing injury. This provision would strike down a 1992 decision of the Court of International Trade (Norwegian Salmon) holding that present injury cannot be based on continuing effects of a past injury.

This position contravenes the definition of present injury in the Agreement and the statute. In addition, it would punish importers who may have caused injury in the past but are not causing injury on vote day, thus running counter to the trade laws' remedial, not punitive, purpose.

- iv. Liberalization of Injury Definition: We oppose any attempt to liberalize the definition of "potential decline" and "potential negative effects" in the context of material injury. These efforts would have the ITC take into account the difference between the actual performance of the domestic industry and what the performance of the industry would have been but for the economic factors having a bearing on the industry's health.

However, these efforts blur the causation element of the Commission's investigation and combine other economic factors with the impact of allegedly unfairly traded imports in determining causation. The inquiry properly before the Commission, however, is whether there has been an actual or potential effect on the domestic industry by reason of dumped imports. The provision violates the Agreement's requirement that injury caused by any other factors besides dumped imports "must not be attributed to the dumped imports." Moreover, the Agreement does not endorse such a test by which the agency would consider what the performance of the industry would have been "but for" the dumped imports plus any other economic factors. Thus, this inquiry would impermissible result in conclusions irrelevant to the causation determination.

- v. Cumulation and Negligibility: We oppose attempts to amend U.S. law concerning cumulation by inserting a "look-back" provision, requiring previous injurious dumping to be considered as an important factor in determining the industry's vulnerability to continued or renewed material injury in an investigation concerning a like product that was the subject of a final affirmative determination during the previous five years. This provision is GATT-illegal because it bases a cumulation determination on events well before the period of investigation -- indeed, it does not even consider whether subject imports have lingering, let alone present, injurious effects in determining whether they should be cumulated.

In addition, efforts are underway to amend U.S. law to state that negligibility will normally to be found if the volume of dumped imports from a particular country is less than three percent of total imports of the like product, unless countries accounting for less than three percent collectively account for more than seven percent of total imports of the like product. However, the percentage of imports not always relevant to determining whether particular imports are negligible, especially in circumstances in which the number of importing countries is few. Indeed, the ITC has, on a number of occasions, found particular imports to be negligible, with no discernible adverse impact on the domestic industry, in circumstances in which they accounted for over three percent of total imports. Accordingly, if U.S. law is to be amended to include the three percent standard, the statute should further state that imports may still be negligible if they account for less than one percent of domestic production even if particular imports represent more than three percent of imports.

#### IV. CONCLUSION

The Uruguay Round Agreement represents the successful conclusion of an ambitious effort to expand the coverage and effectiveness of the GATT system. It also reflects a major accomplishment in the Administration's pursuit of an export-oriented trade policy. We urge the Congress to quickly implement the Agreement and to resist pressures to include extraneous amendments in the implementing legislation.

The PTG was extraordinarily active in supporting the renewal of fast track and we closely monitored and witnessed the closing sessions of the Geneva negotiations. We believe that the complexity of the negotiations and their dynamics make it obvious that the Agreement should be strictly construed in terms of deciding which issues must be addressed in implementing legislation. To open up the legislation to significant changes would invite a host of other countries to do the same, threatening the Agreement. We believe that the U.S. trade laws are more than adequate to redress trade disputes. We do not believe that limitations of these laws, whatever their deficiencies, justify undermining the Uruguay Round by attempting to add on trade law revisions in implementation beyond the scope of the Agreement itself. Furthermore, we strongly support quick implementation. Consequently, we oppose the notion that consideration of UR implementing legislation should be held hostage to consideration of more general trade legislation.

Among other reasons for quick implementation, we believe that the fast track expedited review process does not lend itself to wholesale amendment of the extremely complex and technical antidumping law, in particular relating to issues that are not part of the Agreement and were not discussed in full during the negotiating process.

Chairman GIBBONS. Mr. LaRue.

**STATEMENT OF JOHN P. LARUE, EXECUTIVE DIRECTOR,  
PHILADELPHIA REGIONAL PORT AUTHORITY**

Mr. LARUE. Thank you, Mr. Chairman. It is a pleasure to be here, and on behalf of the port community I would like to thank you for your past support of trade issues as they relate to the ports of the United States. You have been a longtime supporter of all of us.

I am here to express our support from Philadelphia for the GATT, and I would like to take it down to the local level, as Don Blackburn from the Meat Importers Council mentioned on the previous panel, and give you some idea of what the economic impact of the increased level of imported meat provision will have on our port.

Right now the Port of Philadelphia handles 65 percent of all the imported meat that comes into the United States. We have and continue to dominate that particular sector of world trade in the United States. As Don Blackburn mentioned, this meat is only 10 percent of what is in the U.S. market and tends to be very lean and used in institutional settings and is mixed with other products.

As far as its importance to the port, right now it results in three shipping lines, that primarily call on the Port of Philadelphia, from New Zealand and Australia, that without that particular product would not be there. That in turn opens up exports for U.S. markets to New Zealand, Australia, and the South Pacific because of the drive coming from the meat and most of the revenue coming from that way there is a backlog available for U.S. exports.

Meat is also a very labor-intensive cargo. Besides the obvious choices, like longshoremen and truckers, there is a great number of cold storage warehouses. In fact, Philadelphia has more cold storage cubic foot space than any port in the United States. There is a lot of labor that is related to the importation of meat.

It is also very capital intensive. We are just completing a \$19 million terminal renovation at the facility that handles the imported meat. We have, along with a sister agency, the Delaware River Port Authority, they have spent \$5 million on an intermodal rail facility in the port, and they are now looking this year at expanding that with another \$10 million, and most of that is for the handling of meat that is going through the United States to Canada. Because we now have the Canadian Pacific Railroad that makes Philadelphia their southern terminus for their entire system. And one of the principal reasons they have that is to gather the imported meat that comes into Philadelphia.

What has happened is, the shipping lines coming in have diverted their ship calls from the Canadian ports, stopping in Philadelphia, unloading their Canadian cargo and sending it through that way. While we believe the tariff in the GATT is still high, we, again, are realists and we realize more has to be done. We are supportive of it. We think it is positive for us and for the U.S. ports and we look forward to working with you again on other efforts in the future.

Thank you.

[The prepared statement follows:]



TESTIMONY OF JOHN P. LaRUE  
EXECUTIVE DIRECTOR  
PHILADELPHIA REGIONAL PORT AUTHORITY  
TO THE  
U.S. HOUSE WAYS AND MEANS SUB-COMMITTEE ON TRADE  
TUESDAY, FEBRUARY 22, 1994

I AM JOHN P. LaRUE, EXECUTIVE DIRECTOR OF THE PHILADELPHIA REGIONAL PORT AUTHORITY, AN AGENCY OF THE COMMONWEALTH OF PENNSYLVANIA CHARGED WITH THE MANAGEMENT, MAINTENANCE AND PROMOTION OF MARITIME FACILITIES LOCATED IN SOUTHEASTERN PENNSYLVANIA.

I AM HONORED, ON BEHALF OF ONE OF AMERICA'S MOST IMPORTANT SEAPORTS, TO JOIN MY COLLEAGUES FROM THE MEAT IMPORTERS COUNCIL OF AMERICA AND THE AMERICAN FOOD PROCESSING INDUSTRY IN SUPPORTING THE RECENTLY CONCLUDED GATT AGREEMENT WHICH INCREASED THE LEVEL OF IMPORTED MEAT AVAILABLE TO THE UNITED STATES.

WE TAKE THIS POSITION BECAUSE FOR MORE THAN A DECADE THE PORT OF PHILADELPHIA HAS DOMINATED THE IMPORTED MEAT TRADE FROM AUSTRALIA AND NEW ZEALAND. THE PORT HANDLES 65% OF ALL FRESH/CHILLED AND FROZEN BEEF IMPORTED INTO THE UNITED STATES.

TODAY, I WANT TO FOCUS ON WHAT THIS TRADE HAS MEANT FOR THE PORT OF PHILADELPHIA AND THE MANY PEOPLE WHO MAKE THEIR LIVING BECAUSE OF ACTIVITY AT THE PORT.

IN SO DOING I HOPE TO REMIND THE COMMITTEE THAT IN OUR WHOLLY APPROPRIATE ZEAL TO PROMOTE U.S. EXPORTS, WE MUST NOT LOSE SIGHT OF THE MANY POSITIVE EFFECTS IMPORTS HAVE ON THE AMERICAN ECONOMY.

IN THE CASE OF IMPORTED MEAT, THE IMPACT ON THE PHILADELPHIA REGIONAL ECONOMY IS VERY POSITIVE INDEED. IT REPRESENTS ABOUT \$35 MILLION IN DIRECT ECONOMIC BENEFITS AND MILLIONS MORE IN INDIRECT BENEFITS AS A RESULT OF TRUCKING AND RAIL ACTIVITY, WAREHOUSING, FOOD PROCESSING AND RETAIL EMPLOYMENT. I SHOULD ALSO STRESS THAT THIS CARGO IS HIGHLY LABOR-INTENSIVE AND INVOLVES THOUSANDS OF MAN-HOUR SERVICES BY THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND THE TEAMSTERS.

THIS CARGO IS THE LARGEST CONTAINER SOURCE FOR THE PORT OF PHILADELPHIA. THREE MAJOR OCEAN CARRIERS - BLUE STAR LINE, COLUMBUS LINE AND ABC CONTAINER LINE ARE DEDICATED TO SERVING THE PORT OF PHILADELPHIA FROM AUSTRALIA AND NEW ZEALAND. THE SPECIALIZED REFRIGERATED FACILITIES CONSTRUCTED AT THE PORT OF PHILADELPHIA TO HANDLE MEAT ALSO HAVE LED TO OTHER COMMODITIES SUCH AS FRUIT, DAIRY PRODUCTS AND SEAFOOD BEING SHIPPED FROM AUSTRALIA AND NEW ZEALAND THROUGH THE PORT.

RECENTLY, \$19 MILLION WAS INVESTED AT OUR TERMINAL SPECIALIZING IN FROZEN MEAT FOR EXPANSION AND IMPROVED OPERATING EFFICIENCY.

AFTER THE MEAT IS DISCHARGED AT OUR TERMINALS, PHILADELPHIA'S EXTENSIVE INTERMODAL CONNECTIONS ASSURE FAST, ECONOMICAL DELIVERY FURTHER PROVIDING EMPLOYMENT AND REGIONAL ECONOMIC BENEFITS. PHILADELPHIA IS ONE OF THE LARGEST FOOD DISTRIBUTION CENTERS IN THE UNITED STATES, WHICH RESULTS IN A CONSISTENT INFLUX OF LARGE NUMBERS OF REFRIGERATED TRUCKS THAT OFFER LOW BACKHAUL RATES TO THE WEST. THIS WIDE AVAILABILITY OF TRUCK SERVICE IS A HIGHLY ADVANTAGEOUS COMPONENT IN THE ECONOMIC EFFICIENCIES FOR MEAT SHIPPERS USING PHILADELPHIA.

THIS TRADE HAS ALSO SPURRED GROWTH AND IMPROVEMENTS OF OUR AREA'S RAIL SERVICE. IN 1991, CP RAIL BEGAN DIRECT RAIL SERVICE TO THE PORT OF PHILADELPHIA WITH THEIR ACQUISITION OF THE D & H RAIL SYSTEM. CP RAIL'S SERVICE OFFERS A TRANSIT TIME FROM PHILADELPHIA TO TORONTO OF 36 HOURS AND MONTREAL OF 32 HOURS. NO OTHER UNITED STATES PORT HAS SINGLE-LINE-HAUL SERVICE TO CANADA, MAKING PHILADELPHIA THE LOGICAL GATEWAY PORT FOR CANADIAN CARGO.

IT WAS EVIDENT THAT WITH THE ADVENT OF CP RAIL'S NEW SERVICE TO PHILADELPHIA DRAMATIC TIME AND COST SAVING COULD BE REALIZED BY SERVICING CANADIAN CARGO THROUGH PHILADELPHIA. IN MID-YEAR 1991, BOTH COLUMBUS LINE AND BLUE STAR PACE DROPPED THEIR PORT CALL AT HALIFAX AND BEGAN SERVICING CANADA THROUGH PHILADELPHIA. BY DOING SO, THEY REDUCED THEIR TRANSIT TIME, INCREASED SAILING FREQUENCY AND OFFERED FASTER DELIVERY AND TREMENDOUS SAVINGS FOR THEIR CONSIGNEES.

OVER 200 REFRIGERATED CONTAINERS PER VESSEL FOR BLUE STAR PACE AND COLUMBUS LINE ARE LOADED ONTO CP RAIL CARS FOR DELIVERY TO CANADA. THE CONTAINERS ARE LOADED ONTO CP RAIL AT AMERIPOINT A PUBLICLY OWNED, OPEN, INTERMODAL RAIL TRANSFER FACILITY LOCATED DIRECTLY NEXT TO THE TERMINAL. THIS \$5 MILLION FACILITY, WHICH WAS BUILT AND IS OWNED AND OPERATED BY THE DELAWARE RIVER PORT AUTHORITY, IS SLATED FOR EXPANSION, PRIMARILY DUE TO THE SUCCESS OF CANADIAN BOUND MEAT CARGOES.

BECAUSE OF OUR SUCCESS WITH THIS CARGO, THE PHILADELPHIA REGIONAL PORT AUTHORITY HAS LONG BEEN CONCERNED ABOUT THE UNITED STATES MEAT IMPORT ACT AND THE DISRUPTIVE EFFECT IT HAS ON THE PORT, AND THE REGIONAL BUSINESSES INVOLVED IN THE TRANSPORT, STORAGE AND PROCESSING OF IMPORTED MEAT. IN RECENT YEARS, FOR EXAMPLE, THE NEGATIVE ECONOMIC IMPACT OF THE COUNTER-CYCLICAL MEAT QUOTAS IMPOSED BY THE MEAT IMPORT LAW HAS SHARPLY INCREASED FOR UNITED STATES, AUSTRALIA AND NEW ZEALAND BUSINESSES INVOLVED IN THIS TRADE. BECAUSE OF THIS CONCERN, THE PHILADELPHIA REGIONAL PORT AUTHORITY WAS INSTRUMENTAL IN FORMING A WORKING GROUP CONSISTING OF PRIVATE AND PUBLIC SECTOR REPRESENTATIVES FROM PENNSYLVANIA, NEW JERSEY AND DELAWARE WHO ARE ADVERSELY AFFECTED BY THE LIMITED ACCESS OF IMPORTED MEAT PRODUCTS.

LED BY THE PHILADELPHIA REGIONAL PORT AUTHORITY, THIS WORKING GROUP HELD MANY PRODUCTIVE MEETINGS IN WASHINGTON WITH MEMBERS OF CONGRESS, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE UNITED STATES TRADE REPRESENTATIVE AND THE WHITE HOUSE. AT EACH MEETING, THE GROUP STRESSED THAT LIBERALIZING IMPORTED MEAT ACCESS WOULD PROVIDE INCREASED EMPLOYMENT, INCOME AND BUSINESS REVENUES. SPECIFICALLY, THE GROUP URGED THAT THE UNITED STATES ADOPT A POSITION AT THE GATT URUGUAY ROUNDS THAT QUOTAS SHOULD BE LIFTED AND TARIFFS LOWERED. I BELIEVE THAT OUR EFFORTS AND THE EFFORTS OF OUR FRIENDS AT MICA CONTRIBUTED TO THAT PORTION OF THE URUGUAY ROUND AGREEMENT WHICH WOULD REPLACE THE CURRENT MEAT QUOTA SYSTEM WITH A TARIFF RATE QUOTA PERMITTING ENTRY OF A BASE QUANTITY OF 657,000 METRIC TONS OF MEAT WITH PROVISIONS FOR A POSSIBLE 40,000 ADDITIONAL METRIC TONS IN CERTAIN CIRCUMSTANCES.

WHILE THIS IS AN IMPORTANT IMPROVEMENT, WE BELIEVE ALONG WITH MICA THAT THE TARIFF AT 31.4% REMAINS TOO HIGH. NONETHELESS, ON BALANCE THE GATT OUTCOME SHOULD PROVIDE SIGNIFICANT BENEFIT TO THE U.S. ECONOMY.

AS THE IMPORTANT TASK OF IMPLEMENTING THE GATT AGREEMENT PROCEEDS, WE AND OTHER AMERICAN SEAPORTS WHICH RELY ON THIS VITAL INTERNATIONAL TRADE WILL CONTINUE TO WORK CLOSELY WITH CONGRESS TO ASSURE A SUCCESSFUL OUTCOME. PLEASE FEEL FREE TO CALL UPON US FOR ANY ADVICE OR INFORMATION.

THANK YOU.

Chairman GIBBONS. Thank you.  
Mr. Bucks.

**STATEMENT OF DAN R. BUCKS, EXECUTIVE DIRECTOR,  
MULTISTATE TAX COMMISSION**

Mr. BUCKS. Thank you, Mr. Chairman, it is indeed a pleasure to be here and I want to thank you for this opportunity to have a hearing on some very unique issues in the trade agreements, those issues involving the future of State and local governments and the future of federalism and how they might be affected by these world trade agreements. So we appreciate very much this opportunity.

The Multistate Tax Commission, which I represent as its executive director, is an interstate compact agency that works to ensure that multistate and multinational businesses pay a fair share of State and local taxes, a fair share but not more than their fair share. We encourage States to adopt uniform tax laws affecting interstate and international commerce in the interest of harmonizing those State tax laws so that they are both equitable and effective, as well as providing a basis for commerce through a level playingfield that allows businesses to compete on an equal basis because they are taxed on an equal basis.

The commission supports the expansion of international trade in the context of preserving federalism in fairness and taxation.

We are here today because we are concerned that GATT as drafted and the part of the agreements called GATS, the General Agreement on Trade and Services, will undermine federalism and will undermine fairness in taxation. Unless adjusted through certain exclusions or through implementing legislation, these agreements might undermine State powers improperly and might, as well, shift State and local tax burdens unfairly away from foreign taxpayers and onto U.S. businesses and U.S. citizens.

In explaining these concerns, I would first like to make a few background points. First of all, the GATT covers under its jurisdiction State and local sales use taxes. In addition, that portion of the agreement referred to as GATS will cover direct taxes for the first time. State and local income and property taxes will be affected for the first time under a world trade agreement.

One fundamental point that is very important to understand is that States are affected by these trade agreements in ways that the Federal Government is not. An analysis of how Federal taxes are affected by the GATT does not ensure a proper understanding as to how States are affected. The Federal perspective does not yield an accurate view of how States are impacted by these agreements, and that is because States are already operating according to free trade rules under the U.S. Constitution.

The States are subject in their tax laws and regulatory laws to the foreign commerce and interstate commerce clauses, and they have been for 200 years. The Federal Government is not subject to the restraints of the foreign commerce and interstate commerce laws.

Because of these commerce clauses, the GATT, and GATS as well, may become legally binding on the States in ways that they are not legally binding on the Federal Government.



Let me explain a little further. If there is an adverse GATT panel ruling against the States on State tax matters, the foreign business that initiated with the foreign government the concern, could, after having secured the GATT ruling, bring direct suit in the domestic courts of the United States to seek direct enforcement of that GATT ruling under the foreign commerce and interstate commerce clause because they would argue that the GATT ruling was an expression of the foreign policy of the United States. And that would likely be true unless in each and every case the Federal Government acted to reject the GATT ruling as it applied to the States.

Although a foreign party, a foreign business, would not be able to challenge a Federal tax law in court based upon an adverse GATT ruling, they would be able to challenge in court a State or local tax law, unless there are adjustments through exclusions or implementing legislation. So GATT may become binding on State and local governments in a way that it is not binding on the Federal Government.

So one might say, what is the problem here? Well, the problem here in the first instance—and there are two broad concerns—is it may result in tax inequities that favor foreign taxpayers over U.S. taxpayers. The reason is that the GATT provides foreign taxpayers with exclusive access to a set of rules for challenging State and local tax laws that are more favorable than any rules that are available to U.S. taxpayers under the U.S. Constitution. And that is why we are concerned that foreign taxpayers will be able to use the GATT to decrease their State and local taxes and shifting that burden onto U.S. taxpayers.

States are subject under the GATT and the Constitution to two different free trade rules. As I indicated, one set of free trade rules is the foreign and interstate commerce clauses; GATT is the second set of trade rules. Under the Constitution, under these commerce clauses, there is specific and well-defined jurisprudence that has developed over 200 years that carefully defines discrimination. Under GATT, in comparison, there is a very loose and ambiguous definition as to what constitutes discrimination. And because of that loose concept of discrimination, we think that the GATT panels could very well be able to abuse the spirit of the trade agreements.

Trade panels would be comprised of non-U.S. citizens, with no background in federalism, no expertise in State and local taxation, and no obligation to respect the rulings of the U.S. Supreme Court concerning the foreign commerce and interstate commerce clauses.

Because the GATT rules are more favorable than the rules under the U.S. Constitution, and because only foreign taxpayers have access to these rules—the U.S. taxpayer cannot challenge State and local taxes before a GATT panel; only a foreign taxpayer can—and because the GATT rules are more favorable than the U.S. constitutional rules, the foreign taxpayer has the ability to make challenges and to secure results that are more favorable than any results that could be secured by a U.S. citizen, and that is a formula for creating tax inequities over the long term.

We have already seen this happen in one ruling, and there has been only one ruling on State and local taxes under the GATT, and that is commonly referred to as Beer II, and it was a dispute be-

tween Canada and the United States concerning a complex of laws involving beer production and distribution in the United States. In the end, we saw a GATT panel strike down certain State tax rules that we think are nondiscriminatory under the U.S. Constitution and pose no restraint on trade whatsoever.

Here is the problem: Under that ruling, large foreign brewers may be able to secure access to financial benefits that are not otherwise available to their large American competitors here in the United States, the large American breweries. This illustrates that GATT simply allows foreign taxpayers to make a broader range of challenges than those available to U.S. taxpayers and secure results that we do not think are justified.

Our second broad concern is that GATT will undermine federalism unless it is adjusted through exclusions or implementing legislation. GATT trade panels will increasingly begin to exercise jurisdiction over State and local tax matters that have previously been reserved for the U.S. Supreme Court, and these GATT panels may ignore federalism.

One essential feature of federalism is that State and local governments are allowed to make different judgments as to how to respond to the circumstances in their local areas, and even if they are the same circumstances, one State or local government may respond differently from another. That is so that they can experiment and can innovate. They are laboratories of democracy.

In the case of the GATT panels, we think they could strike at the heart of this feature of federalism and require States to adopt the same policies at a lowest common denominator level. Again, Beer II illustrates the problem. By comparing regulatory measures in one State with that in another State, the Beer II panel said as follows: Well, over here in this State you have some measures that are more restrictive than the measures in this State. And simply because they are more restrictive, not because they have been shown to have any restraint on trade whatsoever, we, therefore, strike it down as unnecessary because they are more restrictive than provisions in this other State.

And they applied a standard of whatever is the least restrictive measure among the States should apply to all of the States. If you carry that over to its logical conclusion in taxation, a foreign government that has a manufacturer that manufactures in a higher tax State as opposed to the companies from another nation that manufacture in a lower tax State might very well bring a GATT complaint that says, Well, the taxes on our businesses are higher in this State than in this State, and argue that—and therefore are more restrictive and ought to be lowered, to the lowest common denominator.

The question here is not the issue of what the level of taxation ought to be, the issue is whether or not State governments have the right to determine what the most appropriate level of taxation and the overall level of public expenditures to respond to their circumstances. And we think that the Beer II ruling strikes at the very heart of federalism and the right of States to come to differing conclusions to adjust to the circumstances that they find within their own borders.

So we are concerned that the GATT, unless it is adjusted, will create problems for federalism, will undermine the role of States, and create tax inequities by favoring foreign taxpayers over U.S. taxpayers.

Now, there is a very simple solution, Mr. Chairman, and we proposed the solution to the administration and this remains under discussion.

It is possible for exclusions to be written into the GATT in the form of MFN exemptions and national treatment reservations. The MFN exemptions are to be arrived at among the party States by April 15 and the national treatment reservations by June 15. And we have proposed two types of MFN exemptions and national treatment reservations. Just briefly, we have proposed to the administration that they seek an MFN exemption and a national treatment reservation that would exclude from the scope of the trade agreements any State or local tax measures that satisfy the requirements of the U.S. Constitution as determined by the domestic courts here in the United States.

And, further, we have sought an MFN exemption and a national treatment reservation that would exclude from the trade agreements State and local tax measures that substantially replicate or discharge the requirements of or manifest the policy of the U.S. Internal Revenue Code or other applicable Federal law. We believe State tax policies that must follow Federal law or as a matter of convenience do follow Federal law should be preserved as well, and in my prepared testimony I go into more detail on that point.

But the essential point is this; that we think there should be an exclusion from these trade agreements for any tax laws that either meet the requirements of the Constitution or that meet the requirements of Federal law. And to do so would ensure both tax equity, because the Constitution ensures that State and local governments must treat the foreign taxpayer as well as they treat any U.S. taxpayer, and it ensures as well the role of federalism.

States have important responsibilities to serve the domestic needs of this Nation and they function as laboratories of democracy in meeting those needs. We are very concerned that the diversity within our Federal system will be lessened unless measures are taken in the form of these exemptions, and we ask for their support.

If those exemptions or exclusions are not provided for, we will return to Congress and ask for detailed provisions in the implementing legislation, which I have outlined in my prepared testimony, to further protect the power of the State and local governments and to provide for tax fairness for all of those who operate in the United States, both foreign and domestic.

Thank you very much.

[The prepared statement follows:]



## **"Free Trade, Federalism and Tax Fairness"**

**Testimony before the Subcommittee on Trade,  
Committee on Ways and Means, U.S. House of Representatives  
February 22, 1994**

**Dan R. Bucks, Executive Director  
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The Multistate Tax Commission is an interstate compact agency that works to ensure that multistate and multinational businesses pay a fair share—but not more than a fair share—of taxes to the states and localities in which they operate. We encourage states to adopt uniform tax laws and regulations in the interest of tax fairness as well as administrative ease and efficiency for businesses that operate in several states and nations.

This testimony substantially draws on a larger report prepared by the staffs of both the Multistate Tax Commission and the Federation of Tax Administrators, the latter being the professional association of state tax officials. The Commission appreciates and acknowledges the efforts of the Federation in helping to analyze the impact of international trade agreements on state taxation.

The Commission views the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) from this perspective of fundamental fairness and efficiency. States are committed to treating foreign taxpayers as well as they treat U.S. taxpayers who do business in their borders, and the Commission fully supports this principle of equal taxation. Equality of tax treatment provides a level playing field for the expansion of international trade.

The U.S. Constitution established a foundation for our nation based on the principles of free trade and federalism. It has created the most successful free trade area known in modern times and establishes the ideal pursued by other nations in international trade agreements. The Constitution also establishes a successful system of federalism. In a world where other nations are beset with social tension, and even civil war, over issues of balancing the aspirations of local communities with central governments, the U.S. system is a model for balancing local and national interests.

Over the past two centuries, our nation has enhanced and developed an effective balance between free trade and federalism—a balance that flourishes today. However, GATT and GATS, which do not recognize principles of federalism and the sovereignty of state governments, threaten to destroy that balance. Thus, the Commission proposes measures that would restore, in the context of GATT and GATS, a proper balance between free trade and federalism and ensure tax fairness..

The Constitution, as noted, guarantees that states and localities will treat foreign taxpayers equally as compared to domestic taxpayers. Unfortunately, without significant adjustment through the exemption and reservation process and implementing legislation, GATT and GATS will violate the principle of equality under the Constitution by granting rights and privileges in state and local taxation to foreign taxpayers that are not available to domestic taxpayers. Without adjustments, GATT and GATS will over the long-term:

- reduce state and local taxes paid by foreign taxpayers and unfairly shift that tax burden to U.S. businesses and ordinary citizens,
- transfer authority to determine state and local tax policy from the states, subject to the review of Congress and the U.S. Supreme Court, to international trade panels with little or no expertise in state and local tax policy or constitutional law relating to federalism, and
- erode the ability of states to perform their role as "laboratories of democracy" in our system of federalism—fashioning local solutions to local problems.

These problems will arise from the interaction of GATT and GATS with state and federal laws. The key features of this interaction are as follows:

- First, GATT and GATS establish special rules and appeal procedures that are available only to foreign taxpayers and that are more favorable than the rules and procedures available to U.S. taxpayers under state and federal law and the Constitution. If a special class of taxpayers has access to rules and procedures that are more favorable to them than other taxpayers, those taxpayers will ultimately receive tax benefits at the expense of those less favored.
- Second, unless Congress enacts appropriate provisions of implementing legislation, rulings to international trade panels may be legally binding on state and local governments, even though they are not legally binding on the federal government. States are subject to the foreign commerce and national supremacy clauses of the Constitution. Unless an international trade panel ruling is specifically rejected by the federal government, foreign parties may seek enforcement of that ruling.
- Third, states base many of their tax policies on either the federal tax laws or on mandates imposed by the federal government. The federal law may not conform to the trade agreements, and states may find their taxes vulnerable under the agreements simply because they are following federal law.

### **How GATT and GATS Favor Foreign Taxpayers**

The special rights and privileges that taxpayers will enjoy under GATT and GATS arise from the broad and ambiguous terms used in the agreements and the "dispute settlement mechanisms" established by the agreements. Specifically, the following features of the agreements create problems for state and local taxation:

- The agreements use broad language that is much less precise than tax law and create the potential for unpredictable, unintended and unfortunate decisions. For example, "unjustified discrimination" is an ill-defined, ambiguous standard in the agreements, and the limited history of GATT authorities applying that standard to state taxation is disturbing.

- Foreign companies seeking to reduce their state or local tax bills would no longer be required to bring an action in the domestic courts of the U.S., but they could instead recruit their government to lodge a GATT complaint against the state or locality. "Dispute Settlement Bodies" comprised of private sector persons from other nations who are trade experts, but most likely have little or no tax or federalism experience, would rule on complaints by foreign nations against a state or local tax practice. The Dispute Settlement Bodies would not be bound by U.S. court precedents or any other body of law.
- States have no guaranteed standing before Dispute Settlement Bodies. Absent Congressional action, states cannot be assured that their views will be presented or protected by the U.S. government at any time in the future. The federal government may defend the states' legitimate interests—or it may decline to, at its sole discretion.
- Because GATT and GATS, unlike the U.S. Constitution, do not recognize federalism, and more specifically the rights of state governments, which are otherwise constitutionally restricted from discriminating against foreign and interstate commerce, as a positive value, Dispute Settlement Bodies will be under no obligation to balance the claims of trading interests with subnational governmental rights.

These features combine to create opportunities for tax benefits for foreign taxpayers that are more favorable than any U.S. taxpayer can attain. This fact is illustrated by the one case involving state taxes that has been subject to a dispute settlement ruling under GATT. This case is commonly referred to as *Beer II* and involved a Canadian-U.S. dispute over federal and state taxes and regulations affecting beer production and distribution.

### **The Unfortunate Lessons of *Beer II***

A GATT panel issued a report on February 7, 1992, on Canada's challenge to federal and state laws affecting the beer industry. (This GATT panel decision is commonly referred to as "*Beer II*.") The *Beer II* decision provides ample evidence that states are justified in fearing decisions that will likely flow from Dispute Settlement Bodies under GATT and GATS. *Beer II* ignores federalism entirely and fails to acknowledge the sovereign right of states in a federal system to establish different, but non-discriminatory, laws that reflect local conditions that do not necessarily pertain in all states. Finally, *Beer II* creates tax benefits in states for foreign breweries that no U.S. brewery could obtain in the U.S. court system.

Specifically, there are at least three features of *Beer II* that are unacceptable to the U.S. constitutional framework of federalism. The three troubling features of *Beer II* are the panel's (i) employment of an arbitrarily broad notion of "discrimination;" (ii) application of the "least restrictive measure" standard to define the GATT obligation of "national treatment;" and (iii) elevation of GATT above the U.S. Constitution.

*Overly Broad Concept of Discrimination Used to Benefit Foreign Taxpayers:* The *Beer II* panel ruled against certain state tax laws that do not discriminate against either interstate or foreign commerce. In particular, Minnesota offers favorable excise tax treatment for microbrewery production that is conditioned only on the size of the brewery and is completely neutral



with respect to the national origin or location of the brewery, its product or its inputs. No microbrewery located in Canada is denied access to the favorable tax treatment. (The Minnesota law is distinguishable from some of the other state laws considered in *Beer II* that condition favorable tax treatment on geographic location.) Yet, the *Beer II* panel was unwilling to make that distinction. Employing a "beer is beer" standard, the panel swept the Minnesota-type laws into the scope of its disapproval. Under "beer is beer" reasoning, no government would ever be able to make reasonable or rational distinctions between beer produced under different circumstances unrelated to geographic location. The "beer is beer" standard negates the ability of states to make rational policy choices where there is no evidence of an intent to discriminate against foreign or interstate commerce or to promote local, economic protectionism.

Unless rejected by the federal government or otherwise resolved to the contrary, the original GATT ruling may well provide large Canadian brewers with a special tax benefit in at least one state that is unavailable to large American brewers! This ruling illustrates that GATT and GATS can undermine the equality of treatment between foreign and domestic taxpayers that is guaranteed under the U.S. Constitution. Unless adjusted, GATT and GATS tilt an otherwise level state and local tax playing field in favor of foreign businesses and against the interests of U.S. businesses and taxpayers.

Classifying taxpayers on the basis of size is a common and acceptable practice that generally poses no problems of discrimination against commerce flowing across political boundaries (e.g., in federal law, S Corporations which may not have non-resident alien shareholders can be distinguished from C Corporations on the basis of number of shareholders). Under the U.S. Constitution, state laws like Minnesota's that classify brewers on the basis of size would most likely be upheld. Other state laws that condition favorable tax treatment on in-state location of the activity, inputs or product would most likely fail a constitutional test. The domestic courts of the U.S. would make careful, well-informed, well-reasoned and justified distinctions between these different types of tax laws. The *Beer II* panel did not.

*Ignoring Federalism:* Even more disturbing is the *Beer II* panel's use of a "least restrictive measure" standard for defining national treatment in order to determine whether discrimination exists. Using the least restrictive measure standard, the panel ruled against higher regulatory standards of some states on the basis that other states had lower standards. Some states impose requirements on the methods of distributing beer as an effective and efficient means of collecting excise taxes. Other states, however, do not impose the same requirements. The *Beer II* panel's ruling allowed no room for different requirements based on different circumstances confronted by various states, nor did the panel allow any room for differing judgments by separate sovereigns as to the most appropriate requirements to impose to effect collection of taxes.

By imposing on all states the least restrictive measure standard among the states for assessing whether a neutrally structured and intended measure operates on a *de facto* basis to discriminate under the national treatment obligation of GATT, the *Beer II* panel struck at the very heart of federalism. The panel's reasoning leaves no room for different laws based on different local circumstances, nor for any range of judgment, regardless of the absence of any discriminatory intent in those judgments, to be exercised by different state sovereigns. Indeed, the combination of the least restrictive

measure standard and the acceptance of *de facto* arguments leaves all state law potentially at risk of being subject to challenge under the aegis of GATT and GATS. Higher taxes levied by a state in which a company from one nation does business could be challenged as discriminatory simply because a competitor does business in another state with lower taxes. The following examples illustrate the potential problems created by the *Beer II* reasoning, if applied to state taxation:

- If Chilean wine is sold primarily in states with low wine taxes, while French wine is sold more often in states with higher wine taxes, the French firms could win a *de facto* MFN judgment for a GATT panel against states with higher wine taxes.
- If the gross receipts tax on a foreign-owned long distance telephone company is higher in the states in which it operates than the tax rates on American-owned long distance (or local) phone companies in other states, the foreign-owned company could win a *de facto* "national treatment judgment" against the higher tax states.
- If a foreign-owned bank pays higher property taxes in the one state in which it operates (for example, NY) than do banks, on average, in other states, it could win a national treatment judgment against the high tax state. (This result would potentially disrupt the billions in revenues realized from property taxation, a form of taxation that is covered by GATS. Property taxes are the primary source of support for education in the United States.)

Since GATT/GATS, as *drafted*, does not recognize federalism and looks at "discrimination" on a national basis, differences among states in tax treatment of similar *economic* activity could be used by foreign multinationals to win tax breaks from GATT/GATS panels using the "least restrictive measure" reasoning of the *Beer II* panel. The obvious result of such rulings would be to *destroy* America's federal system. Each state would be barred by GATT/GATS panels from setting its own tax policy, settling instead to the lowest level of taxation by any state.

*GATT Overrules the U.S. Constitution:* The *Beer II* panel decision does not recognize governmental powers that are reserved to the States under the U.S. Constitution. The panel found in *Beer II* the States' alcohol regulatory practices, which could not be described as intended to discriminate against foreign or interstate commerce or to promote economic protectionism, to violate GATT obligations. This violation was found even in the face of the central government's (federal government's) lack of power to require the States to change their alcohol regulatory practices that are reserved to the States under Twenty-First Amendment of the U.S. Constitution. In essence, the panel has used a congressionally approved international trade agreement to overrule the U.S. Constitution—something the U.S. Supreme Court cannot even do.

#### **GATT/GATS Rulings Can Bind States, But Not Federal Government**

As suggested above, GATT and GATS generally will bind the states in ways that do not apply to the federal government. It is important to keep this difference in effect in mind, because the federal government is simply not subject to the many restrictions applicable to the states and the

perspective of the federal government is not, therefore, directly transferable to the states.

GATT and GATS are a part of the foreign policy of the United States that, under the Constitution, is binding on the states. U.S. domestic courts entertaining state tax disputes will consider GATT and GATS rulings by the Dispute Settlement Bodies (and the other authorized decision-making agencies of these trade accords) as expressions approved under U.S. foreign policy unless there is a formal rejection of the rulings by the U.S. government. Thus, in any future cases involving state or local taxes in which the U.S. government does not expressly and firmly reject the GATT or GATS ruling, foreign parties will be able to take the trade ruling into U.S. domestic courts and argue persuasively that the state or local tax practice violates the U.S. Constitution by virtue of being inconsistent with the foreign policy of the U.S.

This ability of foreign parties to seek enforcement of GATT or GATS rulings that may be adverse to a state taxing practice in the domestic courts of the U.S. makes the nature of the dispute settlement process of great concern. Trade panels—closed to the states and comprised of non-U.S. citizens—will begin to play a role previously reserved to the U.S. Supreme Court. Trade panels with little or no background in or sensitivity to state or local taxation and constitutional federalism, unbridled by U.S. Supreme Court precedents and constitutional language on the rights and obligations of subnational governments, but empowered instead to interpret broadly vague language, pose a clear and present danger to the U.S. system of federalism.

### **Federal Laws May Create GATT Problems for the States**

States, especially in the income tax area, have frequently based their state tax treatment on federal law. The practice of "piggybacking" on federal laws typically simplifies tax compliance and reduces costs for taxpayers and states alike. This practice generally supports the free flow of commerce and should not be discouraged by GATS or GATT. Accordingly, state laws based on federal law should not be subject to a separate challenge under these trade agreements.

In addition, there are several state or local tax practices that are required by federal law. This category of state and local taxation should be similarly be protected from the jurisdiction of the trade agreements, more because of the federal interests involved than the state interests.

The following examples—which are not all-inclusive—illustrate the category of laws involved in state taxing practices reflecting federal law:

- Tax exemptions for non-profit and U.S. government enterprises,
- Protection of businesses engaged in interstate, but not foreign, commerce, from state income taxation under PUB. L. 86-272, and
- Tax exemptions for U.S. and state government securities.

These examples all involve activities that provide for favorable treatment of domestic activities. States are prohibited from taxing federal obligations, but they are allowed to tax foreign obligations. States use federal concepts of charitable, non-profit activities to similarly provide favorable tax treatment to charitable activities within their borders. They do not provide favorable tax treatment for charitable activities outside their



borders or, following the federal law, for similar activities provided by for-profit entities. States are required by federal law to provide certain favorable treatment to businesses engaged in interstate commerce, but not those engaged in foreign commerce.

States must comply with federal law and are often wise in using federal tax laws as a basis for their own laws. States should not caught in a conflict between specific federal laws and general GATT requirements. The federal government should protect states from adverse GATT determinations that might arise from their use of or compliance with federal laws.

### **Protecting Free Trade, Federalism and Tax Fairness**

The task at hand is to restore tax fairness and federalism to the framework of the world trade agreements. Unless this task is accomplished, foreign taxpayers will be able to reduce their state and local taxes unfairly at the expense of U.S. taxpayers. Further, because taxation is at the core of sovereignty, the role of the states in our federal system will be undermined as authority over taxation shifts from state and federal officials to non-U.S. citizens serving on international trade panels.

There is a ready solution to the need to restore tax fairness and federalism to the GATT and GATS framework. Currently, in the GATT negotiations, nations are developing exclusions from the GATT and GATS agreements. These exclusions involve Most Favored Nation Exemptions and National Treatment Reservations. The MFN Exemptions are to be resolved by April 15, and the National Treatment Reservations by June 15.

We proposed to the Administration that they seek two types of exclusions from GATT and GATS as both MFN Exemptions and National Treatment Reservations. In developing the proposed exclusions, we seek to establish two broad principles that will restore tax fairness and federalism to the trade agreements:

- 1) The U.S. Constitution should be the basic standard for judging whether state and local taxes are fair and non-discriminatory as they apply to foreign commerce, and
- 2) States should not suffer the penalty of adverse GATT or GATS rulings because they comply with or base their taxes on federal laws.

Using these principles, we have proposed to the Administration that they seek an MFN Exemption and a National Treatment Reservation that would exclude from the scope of the trade agreements any state or local tax measures that "satisfy the requirements of the U.S. Constitution as determined by the domestic courts of the States and the United States." Further we have sought an MFN Exemption and a National Treatment Reservation that would exclude from the trade agreements state and local tax measures that "substantially replicate, or discharge requirements or manifest the policy of, the U.S. Internal Revenue Code or other applicable federal law."

These proposed exclusions from the trade agreements remain under discussion. We seek the support of Congress for these exclusions. If these exclusions are incorporated into the GATT and GATS framework, then there would likely be little need to address state and local tax issues in the implementing legislation for GATT and GATS. However, if these exclusions

are not adopted, we will to return to Congress with extensive and detailed proposals for embodying to the degree possible not only the constitutional and statutory principles listed above, but also a third and fourth additional principles:

- 3) As is the case with the federal government, rulings under GATT and GATS should not be legally binding on state and local governments, and
- 4) Federalism should be recognized as a positive value by allowing state governments, as sovereign entities, full and direct participation in GATT or GATS disputes involving state laws and by requiring that trade panels dealing with state and local tax issues should include tax officials from subcentral governments in federal systems.

Incorporating these principles into the implementing legislation would require detailed provisions dealing with a host of matters including, as a sample, the following: i) a requirement that the U.S. government use the Constitution for judging the acceptability of GATT rulings involving state and local taxes, ii) prohibitions on private rights of action by foreign parties seeking to enforce GATT rulings involving state and local taxes in the domestic courts of the United States, iii) procedures for the direct participation of state governments in defending cases before GATT panels involving state or local taxes, iv) requirements for nominees from other nations acceptable to the United States for serving on trade panels dealing with state and local tax matters, v) consultation procedures between the federal government and state and local government when GATT cases begin to arise, vi) procedures for determining whether and in what manner the U.S. accepts adverse GATT rules, and vii) procedures for the U.S. government to pay compensation or other means that avoid unfunded mandates on state or local governments if adverse GATT rulings occur. There may be other subjects that should be considered in the implementing legislation as well. However, most if not all of these subjects need not be addressed if the U.S. secures the type of MFN Exemptions and National Treatment Reservations we have sought.

The linchpin of our proposals is the Constitution. For that reason, it is necessary to understand why the Constitution works to ensure fundamental fairness in state and local taxation for foreign and domestic taxpayers alike.

### **How the U.S. Constitution Ensures Tax Fairness**

The Interstate Commerce Clause, combined with other provisions of the U.S. Constitution, guarantees that states tax out-of-state parties in the same manner as they tax their own state residents. Further, the Foreign Commerce Clause requires that the states tax foreign parties in the same manner as they tax U.S. parties. Both clauses interact to achieve more effectively and precisely than GATT or GATS can guarantee essential equality in taxation for foreign and U.S. interests alike. Further, the case law under these provisions is careful and well-developed and is not subject to the likely abuses under the ambiguous language and incomplete precedents of the trade agreements. Because of the effectiveness of the U.S. Constitution in guaranteeing equal and non-discriminatory taxation, the Constitution should be the basis for achieving the result sought by GATT and GATS: trade that is not restrained by discriminatory taxation.

Because foreign companies are well protected by the Constitution against unlawful discrimination, local economic protectionism and undue burdens placed upon commerce, GATT/GATS should not limit or affect the tax methods by which states or other subnational governments raise revenue from business activities over which they have jurisdiction. During the past 200 years, the United States Supreme Court has consistently safeguarded interstate and foreign commerce from discrimination and undue burdens caused by unlawful state tax measures. Several provisions of the United States Constitution exist to address overreaching by the states when they seek to require interstate and foreign commerce to bear a "fair share" of taxation. Those protections reside in Articles I, §8, cl.3 (Interstate and Foreign Commerce Clauses), §10, cl.2 (Import and Export Clause), VI (Supremacy Clause), and Amendment XIV, §1 (Due Process and Equal Protection Clauses) of the Constitution. This discussion is limited to an examination of the Commerce Clause protections extended by the Constitution which more than amply protects consistent with the standards of GATT and GATS domestic and foreign companies transacting business in foreign commerce.

Under the Foreign Commerce Clause, states and their political subdivisions are only allowed to impose a tax obligation on businesses engaged in foreign commerce when the obligation:

1. is applied to an activity with a substantial nexus with the taxing state;
2. is fairly apportioned;
3. does not discriminate against interstate commerce;
4. is fairly related to the services provided by the taxing state;
5. does not create a substantial risk of international tax multiplication; and
6. does not prevent the Federal Government from speaking with one voice when regulating commercial relations with foreign governments.¹

Unless each and every requirement listed above is fully met, the tax obligation will fail under the Foreign Commerce Clause and the taxpayer who might have paid the tax will be entitled to meaningful relief. See *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990).

Since the adoption of the Constitution, the United States Supreme Court and state courts have addressed scores of state tax issues and found many to violate the Interstate and Foreign Commerce Clauses. In the past ten years alone, the Supreme Court has issued several opinions declaring invalid against the Commerce Clause state tax measures that bore on interstate and foreign commerce. Representative examples of but a few of those cases are found in *Westinghouse Elec. Corp. v. Tully*, 459 U.S. 1144 (1983); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984); *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988); *Kraft General Foods, Inc. v. Iowa*

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¹See *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 446, 451 (1979) (invalidating county property tax on containers used in foreign commerce); and *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).



*Dept. of Revenue and Finance*, ___ U.S. ___, 112 S.Ct. 2365 (1992). State courts also preserve the free flow of commerce. See *HL Farm Corp. v. Self*, 1994 WL 1927 (Tex.).

Our message is simple: the Constitution works, and has worked, for over two centuries as an instrument of free trade, federalism and tax fairness. That is why we have made the standards and procedures of the Constitution the foundation of our proposals for exclusions of certain state and local tax measures from the scope of the GATT and GATS. That proposal, combined with a further provision protecting states when they act on or implement federal law, would effectively harmonize the trade agreements with our system of federalism. We ask for your support for the MFN Exemptions and National Treatment Reservations that we have proposed.

Protecting the role of state and local governments in our nation is not an abstract or theoretical matter. The states have primary responsibility for meeting the domestic needs of the people of our nation. The states and their subdivisions maintain public order, educate future citizens and workers, maintain the essential infrastructure necessary for commerce and public life, and assist persons beset by misfortune or wrong choices to become productive members of society again. They do these tasks and more in a diversity of ways. That diversity is an important value of our federal system. States are laboratories of democracy and are a continuous source of innovation to meet a range of public needs. Endangering state tax sovereignty inevitably imperils the vitality and stability of our society.

Chairman GIBBONS. Well, Mr. Bucks, I appreciate your testimony and we will try to work with you. If I may say as background, I spent 10 years in the State legislature, on the Finance and Taxation Committee, and I had vast experience in that area and as a lawyer I had a pretty good practice built around taxation at the State level.

Mr. BUCKS. Thank you.

Chairman GIBBONS. I know it is a difficult area. I am impressed with how vigorous the State tax people are in stretching their wings, not only in their own State but throughout the 50 States, or throughout the 185 countries of the world. And I am just not sure how far we can go with this whole area.

I am sympathetic with what you are trying to do, but I am awe stricken by the ambitions of some State tax collectors, frankly. I have seen national businesses that have banks of countless lawyers just to try to straighten out nothing but State taxation, and the vigorousness with which States go about collecting taxes in all kinds of manners. So I am concerned about your concern, and I will listen to it with great sympathy, but I am almost a little skeptical of your position.

I realize we are working together on this and we will continue to work together, but just put me down as being undecided, if you would, for the time being.

Mr. Black, I like your suggestions that we put off as many of these special pleadings for dumping legislation at this time and to be taken up in a separate round. I will try to carry that out. That is my idea too.

I wonder if you had given any thought to perhaps including some kind of Caribbean proposal to equalize the opportunities in the Caribbean with the NAFTA? It does not seem to be very complicated. We just have the problem mainly in the garment area and in the intellectual property area. Could we consider that in this Uruguay round? It would be minuscule in the whole thing, as I see it.

Mr. BLACK. I think it is something I would be glad to look at, Mr. Chairman. I confess I have not really done so.

Chairman GIBBONS. I bring it up as a constructive suggestion. We have got a problem. The NAFTA goes past the Caribbean Initiative in a number of relatively small areas, and we thought at one time very seriously of tackling that within the NAFTA, but the administration had so many things on the table. The NAFTA was so controversial anyway, we just did not want to take that up.

I would think it is a just thing for us to do, to take up the difference between the NAFTA and the Caribbean Initiative and straighten out some of those problems in this legislation.

Mr. BLACK. I know I have some members who share your concern and we will try to work it out internally and see if we can come up with something constructive.

Chairman GIBBONS. Mr. LaRue, I would just make a personal plea to you. Would you maybe work on some of those Congresspeople from Pennsylvania? We need their votes on some of these things.

Mr. LARUE. We have been trying.

Chairman GIBBONS. Please do.

Well, this concludes our hearing today. Let's keep the record open until April 15—that is the day the Uruguay round will be signed—for further comment by people who would like to comment. If there are any interests in the United States who feel that these hearings are not complete, we would urge they file statements with us. And if they feel very strongly about that, come see me about that. I would appreciate interaction with them.

Once again, all the witnesses have given us some good testimony as to what we need to consider. We will try to do it and we will see you here in a few months on the fast track implementation.

Thank you very much.

[Whereupon, at 1 p.m., the hearing was adjourned.]

[Submissions for the record follow:]



BEFORE THE  
SUBCOMMITTEE ON TRADE  
WAYS AND MEANS COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

**Hearings on the Trade Agreements  
Resulting From the Uruguay Round  
Multilateral Trade Negotiations**

Written Statement of  
The Ad Hoc Coalition on  
Crushed Limestone:  
Texas Crushed Stone Company  
Parker Lafarge, Inc.  
Gulf Coast Limestone, Inc.

These comments are submitted on behalf of the Ad Hoc Coalition on Crushed Limestone, in response to the subcommittee's notice dated January 25, 1994, providing the opportunity to submit written statements regarding the trade agreements resulting from the Uruguay Round of multilateral trade negotiations. The Ad Hoc Coalition on Crushed Limestone is comprised of the following producers and distributors of crushed limestone in the Southeast Texas region: Texas Crushed Stone Company; Parker Lafarge, Inc.; and Gulf Coast Limestone, Inc.¹

Texas Crushed Stone Company is a crushed limestone producer located in Southeast Texas. Texas Crushed Stone Company operates a limestone quarry in Georgetown, Texas, and the company headquarters is also located in Georgetown, Texas.

Parker Lafarge, Inc. (PLI) is similarly a crushed limestone producer located in Southeast Texas. PLI operates a crushed limestone quarry at New Braunfels, Texas and the headquarters of Parker Lafarge is located in Houston, Texas. PLI is owned by Lafarge Corporation, Reston, Virginia, and Parker Brothers & Co., Inc., Houston, Texas.

Gulf Coast Limestone, Inc., a distributor of crushed limestone, is also located in Southeast Texas. The company headquarters is located in Seabrook, Texas.

The Ad Hoc Coalition on Crushed Limestone limits its comments to issues that it believes the Administration and Congress should include in the implementing bill to address concerns with the existing U.S. antidumping law and to implement the Uruguay Round antidumping agreement.

#### I. REGIONAL INDUSTRIES

The U.S. antidumping law, as is true for the antidumping laws in other countries, generally is utilized where an industry in the country is experiencing injury by dumped imports. U.S. law and administrative practice have long recognized that for cases involving particular products (generally products with a low value-to-weight ratio such as cement), the impact of imports may be focused on specific regional markets which are highly self-contained from a domestic supply base. Relief from dumped imports in such situations has been specifically provided for in U.S. law [19 U.S.C. § 1677(4)(C)] and in the existing GATT antidumping Code [Art. 4:1(ii)].

¹ - The Southeast Texas crushed limestone industry has developed a highly efficient rail transportation system to economically transport and distribute crushed limestone products in the Southeast Texas region. These crushed limestone products are used for the production of ready-mixed concrete, hot-mixed asphaltic concrete, stabilized products and construction bases.

Our understanding is that most regional industry cases involve multiple states. E.g., Cut-To-Length Carbon Steel Plate from the Federal Republic of Germany, Inv. No. 731-TA-147 (Prelim.-Remand), USITC Pub. 1550 (July 1984) (imports entered the western area of the United States consisting of the states of California, Washington, and Oregon); Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 (Aug. 1990) (imports entered a southern-tier region consisting of California, Texas, Arizona, New Mexico, Alabama, Louisiana, Mississippi and Florida). However, the law does not require a substantial part of the nation for there to be a "regional industry". In our case, crushed limestone has a very low value-to-weight ratio making competition over significant distances economically impossible because of freight costs. Indeed, the International Trade Commission agreed that an area constituting roughly one-third of Texas was an appropriate regional market. Nonetheless we were denied a full investigation on the basis that our regional market (which constituted just 3% of U.S. consumption of crushed limestone) did not receive a sufficiently high proportion of imports from the country claimed to be dumping (50-60% of imports from Mexico were into the regional market). Yet the statutory test and the GATT Code test is whether "there is a concentration of dumped imports into such an isolated market" [Art. 4:1(ii) of GATT Antidumping Code; 19 U.S.C. § 1677(4)(C)]. We are unaware of any case where the import concentration was as high as the 17-20:1 ratio in crushed limestone. The question which arises is whether Congress intended for relief to be denied where a small regional industry is materially injured by dumped imports simply because the regional industry is a small one and takes a disproportionate but not nearly all of the imports? We don't believe that Congress could have intended such a result, but that is the effect of the Commission's determination in our case. Crushed Limestone from Mexico, Inv. No. 731-TA-562 (Prelim.), USITC Pub. 2533 (July 1992).²

It is our understanding that Congress has long been concerned that relief under our trade laws be available regardless of size of the business and that the burdens of petitioning not pose an insurmountable burden to petitioners. Our experience with the law in 1992 suggests that a change in the statute is necessary to adequately safeguard the rights of smaller companies faced with unusual fact patterns, i.e., cases involving small geographic areas. Let us review the facts of our situation in a little more detail.

In our case, the Commission was confronted with the question of whether the import "concentration" in the region was sufficient. The Commission found insufficient import "concentration" in the region (USITC Pub. 2533 at 14-15), even though the Southeast Texas region accounted for only 3% of total national consumption of crushed limestone (USITC Pub. 2533 at 23) and received almost 60% of the imports of crushed limestone from Mexico in 1991 (USITC Pub. 2533 at 14-15). Hence, the volume of dumped imports into the Southeast Texas region amounted to approximately twenty times what could be expected if such imports were to be distributed evenly nationwide. In contrast, the Commission has found sufficient concentration where the volume of imports in the region was only twice what could be expected if such imports had been distributed evenly nationwide. E.g., Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1088 (Aug. 1980) at 11-12. An administrative standard (share of total imports should normally be 80% or more into the region) that may make sense when applied to larger regions, such as the entire West Coast, does not make sense when applied to smaller regions which only comprise a portion of a single state (in our case approximately one-third of the counties in the state of Texas). Indeed, the Commission's interpretation appears to ignore the clear congressional intent exhibited in the legislative history of the Trade Agreements Act of 1979. See S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979) ("[t]he requisite concentration will be found to exist in at least those cases where the ratio of the subsidized, or less-than-fair-value, imports to consumption of the imports and domestically produced like product is clearly higher in the relevant regional market than in the rest of the U.S. market"); H.R. Rep. No. 317, 96th Cong., 1st Sess. 73 (1979) ("[such] concentration could be found to exist if the ratio of such imports to consumption is clearly higher in the regional market than in the rest of the U.S. market").

Recommended Legislative Change. Congress should clarify in the implementing legislation for the Uruguay Round that the International Trade Commission is to compare the relative market shares for dumped imports when evaluating the concentration of imports affecting regional industries. Congress should include the following amendment to the implementing legislation:

² - Because the Commission has been given broad discretion to administer the antidumping statute, the determination was affirmed by the Court of International Trade on May 25, 1993. Texas Crushed Stone Co. v. United States, 822 F. Supp. 773 (CIT 1993). The matter is now on appeal before the the Court of Appeals for the Federal Circuit. CAFC Ct. No. 93-1481.

Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)) is amended by adding at the end thereof the following new sentences: *"Concentration of subsidized or dumped imports in a regional market will be determined by comparing the imports in the region divided by the regional production or consumption versus the imports to the rest of the country divided by the national production or consumption. The import concentration criteria will be satisfied whenever the ratio of imports in the region is greater than the ratio of imports in the rest of the nation."*

Such a clarification is consistent with existing GATT Antidumping Code language and the language contained in the Final Act. Compare Uruguay Round Final Act, Antidumping Code, Art. 4.1 with 1979 GATT Antidumping Code, Art. 4.1. Thus, while the concerns raised herein are not anchored in changes to the antidumping code pursuant to the Uruguay Round Final Results, the changes do implement the Code language that presently exists that has been misconstrued by the Commission.

## II. OTHER ISSUES

Assuming Congress modifies existing law to eliminate the disparate treatment afforded industries in small isolated markets, there are a series of issues in the Uruguay Round antidumping text that could be of importance to our industry in any future antidumping action. We address them below.

### A. Changes Which Are Permitted By the Uruguay Round Final Results

As the Subcommittee is aware, import transactions are broadly divided into two categories -- imports by unrelated parties (so-called purchase price situations) and imports by related parties (generally "exporter's sales price" ("ESP") but also certain purchase price transactions). It is our understanding that when Congress first adopted the Antidumping Act, 1921, the "ESP" option was adopted to provide protection to domestic producers from transfer price manipulation or difficulties in valuing consignment sales. It is ironic that a provision designed to provide extra protection to domestic producers is widely viewed as shielding related parties from the full impact of the law.

Imports by related parties are not given the same scrutiny as to absorption of antidumping duties by the foreign exporter, essentially giving related party importers carte blanche to absorb duties and frustrate the market-correcting forces that the antidumping law is intended to address. Absorption in purchase price situations is clearly actionable under existing U.S. law, regulations and practice. Similarly, we have been informed that counsel for foreign producers have indicated in public statements and law reviews that the U.S. practice of not deducting reasonable profits on resale give foreign producers selling through related party importers an advantage over those selling to unrelated importers. Similarly, only the United States has a provision called the "ESP offset" -- an administrative creation which negates specific statutory (and GATT directed) deductions from the resale price in the United States. There is no justification for these distinctions which prevent our trade laws from being effective when related party importers are involved.

While the U.S. law and administrative practice have prevented the absorption of dumping duties in purchase price situations, the Uruguay Round results provide a specific measure to address the same problem of duty absorption in related party importation and reaffirms the right of countries to deduct profits on resale in related party situations.

Article 9.3.3 of the Uruguay Round Final Act Antidumping Text permits the antidumping duties paid to be treated as a cost where price changes reflecting the dumping duties have not been passed on to unrelated customers. This is another way of stating that dumping duties can't be absorbed by the foreign producer or its related party importer. This provision should be added to U.S. law. Concerns over possible paper transaction games by related party importers who raise the price of the product covered by an order but reduce prices for other products to create a false impression of elimination of dumping can be handled in the U.S. by a certification by the importer after resale or upon importation that no price manipulation of other products will or has occurred.

Similarly, Article 2.4 of the Uruguay Round Final Act Antidumping text and Article 2.6 of the existing Antidumping Code specifically authorizes the deduction of profits on resale ["allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made"]. Similar language existed in the 1967 Antidumping Code. Our major trading partners with active antidumping duty laws deduct reasonable profits on resale and do not permit a deduction from foreign market for a so-called "ESP offset". Our trading partners act in conformance with GATT rights and obligations. The U.S. did not convince the rest of the world that it was "wrong" nor was the GATT modified in Geneva. In such circumstances the Administration and Congress should stop penalizing U.S. producers by understating the dumping margins in related party importer situations.



In our case, the importer of the product from Mexico is a related party to the foreign producer. Hence, correction of these problems will have a direct and immediate impact on any case that our industry brings in the future.

B. Important Issues Not Specifically Addressed By the New Or Existing Antidumping Code

Compensation. Small- and medium-sized industries such as our own, have a difficult task of marshalling resources to bring antidumping cases. Pursuant to the now mandatory sunset review provisions of Article 11.3 of the Uruguay Round Final Act Antidumping text, relief available under U.S. law may be shorter lived regardless of the continued presence of dumping by foreign producers and such relief will certainly cost domestic producers more to pursue because of additional injury proceedings on a periodic basis.

The Congress can and should see that our antidumping law accomplishes its objectives. If relief may be available for shorter periods, it is critical that relief be available earlier so that industries are not subject to waves of unfair trade practices driving them out in stages. While existing U.S. law arguably permits early relief, practice before the Commission suggests that the existing injury and threat standard as applied, if not modified at least in practice, may have the unintended effect of forcing companies to reduce operations, employment, R&D and capital expenditures before relief is available and then not being able to justify reinvestment because of the continued dumping of foreign competitors and the potentially short-life of the relief preventing a reasonable return on building and plant expenditures. Such a result should be viewed as unacceptable.

Similarly, providing compensation to the petitioner and those supporting the petition where dumping continues would provide a strong incentive to foreign producers to stop dumping (as all duties would now go to their domestic competitors), would provide a partial offset to the continued dumping permitting U.S. companies to remain competitive, would reduce the barriers to bringing meritorious cases and would help companies actually obtain a "level playing field" long promised by this and prior Administrations and by the Congress. Compensation should be limited to money actually collected by the Treasury Department in the form of antidumping duties. Such relief is not prohibited by the GATT.

### III. CONCLUSION

Our law as presently administered discriminates against certain small regional industries regardless of the harm experienced by reason of dumped imports. Congress should clarify in the implementing legislation for the Uruguay Round that the International Trade Commission is to compare the relative market shares for dumped imports when evaluating the concentration of imports affecting regional industries. Congress should include the following amendment to the implementing legislation:

Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)) is amended by adding at the end thereof the following new sentences: *"Concentration of subsidized or dumped imports in a regional market will be determined by comparing the imports in the region divided by the regional production or consumption versus the imports to the rest of the country divided by the national production or consumption. The import concentration criteria will be satisfied whenever the ratio of imports in the region is greater than the ratio of imports in the rest of the nation."*

Domestic producers facing dumped foreign merchandise should be entitled to (1) a fair hearing on whether such practices are causing or threatening harm, (2) effective relief, and (3) a process which does not encourage evasion or continued dumping. Our law as administered, unfortunately, does not provide effective relief where related party importers are involved and unwittingly encourages evasion and continued dumping. Congress can and should address the problems causing these distortions to occur.

Respectfully submitted,

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Crushed Limestone:  
Texas Crushed Stone Company  
Parker Lafarge, Inc.  
Gulf Coast Limestone, Inc.

## STATEMENT OF CHOCOLATE MANUFACTURERS ASSOCIATION OF THE U.S.A. AND NATIONAL CONFECTIONERS ASSOCIATION OF THE U.S.

Mr. Chairman, thank you for the opportunity to submit testimony on behalf of the members of the Chocolate Manufacturers Association of the United States of America and the National Confectioners Association of the United States concerning the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations.

The Chocolate Manufacturers Association represents manufacturers of finished and semi-finished chocolate products. The industry's products are used extensively in the confectionery, bakery and dairy industries.

The National Confectioners Association represents U.S. manufacturers of chocolate and non-chocolate candy products, as well as chewing gum and candied nuts.

The Associations together represent 100 companies who operate 125 facilities across 32 states and employ 65,000 people. In 1992, member companies produced over \$10.3 billion (wholesale value) of confectionery products. The wholesale value of the industry exports in 1992 was \$342 million.

Our two Associations have long been proponents of eliminating barriers to trade in the U.S. and around the world. Our position is well documented.

In the 1979 Tokyo Round, U.S. import duties on finished chocolate and non-chocolate confectionery were immediately cut to 5% and 7% and bound at that rate. Reductions to the equivalent level were not obtained from trading partners. U.S. duties were set at the lowest rate of any nation save Hong Kong. As a consequence, U.S. semi-manufactured and finished confectionery exports have been, and continue to be at a considerable disadvantage in penetrating foreign markets where tariffs remain between 10% and 80%.

The U.S. industry has looked upon the Uruguay Round as an opportunity to redress this inequity and obtain the same opportunities for U.S. confectionery in foreign markets as foreign confectionery manufacturers have in the United States, especially in the lucrative new markets of eastern and central Europe or Asia.

We communicated extensively with the U.S. trade representative and the U.S. Department of Agriculture beginning in 1988 regarding our priorities for the Round. We based our priorities on industry activity to develop a particular foreign market; consumption trends and long-term potential demand in the country; and the degree of access to the U.S. market enjoyed by that country's cocoa, sugar, and confectionery exports.

We clearly noted that high tariffs are the most pervasive obstacle to the confectionery industry's export effort. They are a major deterrent to market entry and are an insurmountable obstacle to our companies' attempts to reach consumers and build market share. We also noted that we were not prepared to have U.S. confectionery duties go below 5 and 7% without a multilateral resolution removal of the agriculture subsidies issue and removal of the cost penalty on the industry's essential raw materials -- sugar, milk and peanuts.

While full details of the results of the Uruguay Round are yet to be revealed, what we have learned about the "successes" of the Round for U.S. confectioners is disappointing, especially since confectionery was on the U.S. Department of Agriculture's "priority" negotiating list.

For instance:

- Japan will reduce its 35% tariff on non-chocolate confectionery to only 25% by the year 2001.
- Hungary will replace its onerous quota on chocolate with a 50% duty, apparently reducing to only 30% over a long-staging period. It will reduce its tariffs on sugar confectionery to below "currently applied rates."

- Poland has offered a 135% tariff on confectionery, declining to 86% by 2001.
- The EC confectionery industry will receive a 10% preferential rate for EC confectionery exported into eastern and central Europe.
- The Philippines will reduce its tariff on sugar confectionery from 50 to 45%.
- Domestic price support programs for sugar, peanuts, and milk will be largely unaffected by Uruguay Round results.

And these are the successes! For many other countries, there were no changes.¹ However, the U.S. appears to have agreed to cut U.S. confectionery tariffs 15-20% across the board to all Uruguay Round participants.

These results are unsatisfactory. To be successful from our industry's perspective, the Uruguay Round must quickly bring equivalent access to important markets which we have repeatedly identified to the appropriate agencies. At a minimum, the Uruguay Round should record substantial progress, and the United States should continue to demand equal access for its confectionery products to all foreign markets.

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¹ In addition to Japan, Hungary and the Philippines, the U.S. industry requested action in Argentina, Korea, Switzerland, Brazil, Indonesia, Malaysia, Thailand, European Community, and Turkey.



STATEMENT OF  
 CHARLES W. SALANSKI  
 Chairman  
 of the  
 COMMITTEE OF DOMESTIC  
 STEEL WIRE ROPE AND  
 SPECIALTY CABLE MANUFACTURERS  
 On  
 The Trade Agreements Resulting  
 From the  
 URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS  
 February 28, 1994

**I. INTRODUCTORY STATEMENT**

This statement is submitted on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee) with regard to the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), and the pending legislation to implement those accords.

The Committee is composed of the following U.S. producers which account for most of the domestic steel wire rope production: Bridon American Corporation (Wilkes-Barre, PA); Broderick and Bascom Company (Kenosha, WI); Macwhyte Company (Kenosha, WI); Paulsen Wire Rope Corporation (Sunbury, PA); The Rochester Corporation (Culpeper, VA); Union Wire Rope (Kansas City, MO); and Wire Rope Corporation of America, Incorporated (St. Joseph, MO).

The Committee has fought a long and costly series of battles to preserve the continuing viability of a domestic steel wire rope industry in the face of incessant unfair import penetration of the U.S. market. As a result of these battles, there are now in force antidumping duty orders against steel wire rope from Japan, Korea and Mexico, and a countervailing duty order against steel wire rope from Thailand. Moreover, in recent investigations, the International Trade Administration of the U.S. Department of Commerce has determined that steel wire rope manufacturers in several other countries - including Argentina, India, the People's Republic of China and Taiwan - have dumped wire rope in the U.S. market. The dumping margins found in these investigations have ranged upwards of 111 percent ad valorem.

From the perspective of its long-standing struggle against unfairly traded imports, the Committee views the pending implementing legislation as an important opportunity to ensure that this country's trade laws are maintained and strengthened. The Committee believes that the text of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations provides the present Administration and this Congress with ample latitude for such a course. The Committee has numerous concerns but will confine itself primarily to three principal areas in this statement: the so-called "sunset" provision; compensation to domestic industries; and cumulation and the measurement of "negligible" import levels. These subject areas are discussed in detail below.

**A. THE IMPLEMENTING LEGISLATION PROVIDES AN IMPORTANT OPPORTUNITY FOR PROVIDING NECESSARY AND PROPER TOOLS FOR U.S. INDUSTRIES TO COMBAT UNFAIRLY TRADED IMPORTS**

**A. The "Sunset" Provision**

Neither the current version of Article VI of the GATT nor U.S. law provide for the arbitrary termination of antidumping duty orders after a specific duration. The Final Act proposes a

significant change to current law. Article 11.3 mandates the termination of orders after five years from the imposition of "definitive" antidumping duties, unless it is determined after a review conducted by the administering authority that the "expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." The U.S. statutory implementation of this provision must be designed in such a manner as to minimize the detrimental impact this restriction could have upon domestic industries' ability to avail themselves of unfair trade remedies. Certain elements are critical.

First, it is imperative that the implementing legislation make clear that the "sunset" provision would effect only those antidumping duty orders resulting from investigations initiated on or after the date that the legislation becomes law. Retroactive application of this provision to preexisting orders would be patently unfair to those domestic industries that decided to proceed with the costly petition and investigation process with the understanding that a resulting order would remain in place under the conditions of existing law. Moreover, retroactive application of the "sunset" provision to those orders already in place would provide an unwarranted windfall for those foreign nations and companies which have been proven as active participants in unfair trading practices. These players should not be allowed to attain through the operation of this accord that end which the United States would never have allowed through negotiation of the accord.

Second, the review of the order to be conducted after the five year period should be structured so as to safeguard domestic industries' procedural and substantive rights under the process within the confines of the text of the Final Act. Several elements should be incorporated in this regard. First, the cash deposit requirements existing under the order should remain in place until the review is completed. Second, the burden of persuasion should remain with the foreign manufacturers/exporters covered by the order to show that the expiry of the duty will not lead to continuation or recurrence of dumping and injury. If the review finds that the expiry of the duty will lead to a continuation or recurrence of either dumping or injury, the order should remain intact. Third, the rule of adverse inference and the use of "best information available" should be applied against noncooperative or nonresponding foreign manufacturers/exporters to the same extent as they are applied in the original investigation. Fourth, the threshold for a determination that injury will likely result if the order is lifted should be less than that which exists under present U.S. law regarding "threat" of material injury. This is particularly important in those instances where the imposition of the antidumping duty has been effective in dramatically reducing the level of imports covered by the order. Fifth, the principle of "cumulation" should apply in these reviews when determining whether injury would likely result if an order is terminated. Sixth, provision should be made to allow for termination of the order with respect to less than all foreign manufacturers/exporters covered by that order in appropriate circumstances. Lastly, if an order is terminated with respect to some, but not all, foreign manufacturers/exporters, provision should be made to bring those "excluded" manufacturers/exporters back under the order in appropriate circumstances through the operation of a "changed circumstances" review.

#### **B. Compensation for Domestic Industries**

Compensation for domestic industries which successfully petition for the imposition of an antidumping duty order is an idea whose time has arrived. This is particularly true in light of the "sunset" provision which, however implemented, could be expected to dramatically reduce the operational period of an antidumping duty order. It is widely accepted that compensation would not be violative of the GATT, either as currently structured or as amended

by the Final Act. The Congress should take this opportunity to implement this inherently equitable mechanism.

While application of this country's unfair trade laws, particularly the imposition of antidumping duty orders, may serve to "level the playing field", these laws do little, if anything, to redress the material injury sustained by a domestic industry. The principal shortcoming of these laws has been described as follows:

[T]he trade remedies are reactive in character...[T]ime is consumed preparing a case and in conducting the investigation once a petition is filed, during which time injury may continue to occur. If an industry succeeds in establishing dumping or subsidization, it does not receive any form of compensation for the economic injury which has already occurred - the relief available is prospective in nature.¹

An antidumping duty action is almost always brought by private domestic industry, not by the government. At the time when a party is suffering material injury, that party must expend vast resources in preparing a petition and prosecuting the action, in most cases before two separate administrative agencies. Additionally, in most cases, the petitioner must confront and address the opposition of numerous, well-financed parties. If an order is attained, the petitioner must usually expend further resources in defending that order upon judicial review. To make an order effective over time, the party must normally request or react to a succession of administrative reviews.

However, the antidumping duties paid are collected and retained by the government. The domestic industry, for its efforts, receives but the hope of an indirect benefit. Moreover, under the "sunset" provision of the Final Act, this indirect benefit will accrue for no more than five years before the industry must again demonstrate that the order is necessary to maintain the level playing field.

Compensation to the petitioning industry, in the form of the antidumping duties collected as a result of the order, is a practical and equitable measure. These funds could be used in part by the petitioning entity to offset the resources expended to bring the antidumping duty action, thereby alleviating the financial burden upon an already materially injured entity. More importantly, however, these funds should be directed to research and development efforts and improvements in internal management so as to permit the petitioning party to adequately recover its competitive footing over the lifetime of the order.

### C. Cumulation and Measurement of "Negligible" Imports

Cumulation of imports from two or more countries subject to investigation when determining whether there exists material injury is a long-standing and judicially sanctioned practice under U.S. law. Indeed, this practice was codified by the Trade and Tariff Act of 1984. Cumulation is now specifically sanctioned by the Final Act, which should render this practice immune to GATT challenge. The Final Act additionally specifies that the volume of dumped imports from a particular country will "normally" be regarded as negligible if it is less than three percent of the total volume of imports of the like product in the importing country, unless "countries which individually account for less than three percent of the imports of the like product in the importing

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¹ T. Howell, W. Noellert, J. Kreier and A. Wolff, Steel and the State: Government Intervention and Steel's Structural Crisis, at 515-16 (1988).



country collectively account for more than seven percent of imports of the like product in the importing country."

Under current U.S. practice, there does not exist a "bright line" as to the level below which imports will be regarded as negligible. Indeed, U.S. law does not speak to the concept of "negligible" imports except in the context of cumulation. The language of the Final Act does not mandate that such a "bright line" now be drawn, only that a presumption be made that imports amounting to less than three percent of the total volume of imports of the like product be excluded from the investigation. The implementing legislation must encompass two points in this regard. First, it is important to note that the numerical benchmark contained in the Final Act is based on share of total imports, rather than on share of apparent domestic consumption as is the case under current U.S. practice. Use of the former as a benchmark necessarily decreases, in absolute terms, the volume of imports which could be considered negligible. The International Trade Commission should be directed to consider negligibility issues on this basis. Second, The International Trade Commission should be able to maintain its present flexibility in determining what constitutes a negligible level of imports on a case-by-case basis.

#### D. Additional Provisions

In addition to those issues discussed above, attention must be paid to certain other critical areas addressed in the Final Act.

i) Anti-Circumvention Measures: The text of the Final Act is silent as to anti-circumvention measures. This is significant, and the Committee acknowledges the U.S. negotiators' success in removing from the text of the so-called "Dunkel Draft" provisions which would have weakened existing U.S. statutory and regulatory protections against the circumvention of antidumping and countervailing duty orders. Existing anti-circumvention measures should be strengthened, including the establishment of firm statutory deadlines for the initiation and completion of anti-circumvention investigations. Compensation to domestic industries should be granted where additional parts or components are brought within the scope of an antidumping duty order.

ii) Consideration of Export Performance of the Domestic Industry: The text of the Final Act states that one of the factors to be considered in determining whether a domestic industry is suffering material injury by reason of unfairly traded imports is the export performance of the domestic industry (Article 3.5). It is not unusual for domestic companies to look towards export markets as a balance to the market share lost to unfairly traded imports in the domestic market. Indeed, during a period when a domestic industry is suffering material injury, it may be that the industry's ability to compete in export markets provides a necessary lifeline for the continuing survival of that industry. A strong export performance demonstrates that a domestic industry has the ability to compete in markets not then subject to dumping or other unfair trade practices. It should not mitigate consideration of whether the industry is suffering material injury in the domestic market as a result of unfairly traded imports.

iii) Consideration of Dumping Margins: The text of the Final Act states that one of the factors to be considered in evaluating the impact which dumped imports are having on the domestic industry is the magnitude or margin of dumping (Article 3.4). This factor is not referenced in current U.S. law. Depending on the industry and the current condition of the market, a 10 percent dumping margin can be as devastating - perhaps more devastating - to a particular U.S. industry as a 50 percent margin. The implementing legislation should make clear that consideration of this factor is not required nor applicable in many cases.

We appreciate the opportunity to submit these comments for the record, and we look forward to working with the Congress in developing implementing legislation which will prove beneficial to U.S. industry, in the context of the Final Act.

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**  
**CONGRESSIONAL STEEL CAUCUS**  
**March 3, 1994**

The Honorable Sam Gibbons  
 Chairman  
 Subcommittee On Trade  
 Committee On Ways and Means  
 1136 Longworth HOB  
 Washington, D.C. 20515

Dear Mr. Chairman:

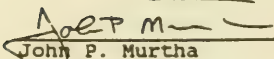
As a fellow member of the Congressional Steel Caucus, we thought you would be interested in the enclosed testimony which was delivered to us earlier this morning.

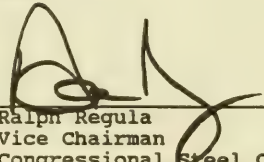
Witnesses at our hearing included all segments of the American steel industry and its workers. Participants identified a list of priorities with respect to the Uruguay Round of the GATT and the implementing legislation. The enclosed testimony will enable Congress and the Steel Caucus to address their concerns in the crucial GATT implementing legislation.

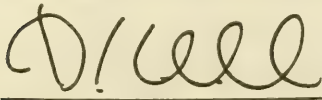
We would appreciate your serious consideration of these views. In addition, ~~we respectfully request the enclosed statements be made part of the hearing record for the Subcommittee on Trade of the Committee on Ways and Means.~~

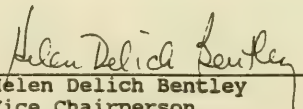
Your cooperation is deeply appreciated.

Sincerely,

  
 John P. Murtha  
 Chairman  
 Congressional Steel Caucus

  
 Ralph Regula  
 Vice Chairman  
 Congressional Steel Caucus

  
 Peter Visclosky  
 Chairman  
 Executive Committee  
 Congressional Steel Caucus

  
 Helen Delich Bentley  
 Vice Chairperson  
 Executive Committee  
 Congressional Steel Caucus

American Iron and Steel Institute

**Remarks of David Hoag, Chairman and CEO of LTV Steel Corporation  
On March 2, 1994 to the Congressional Steel Caucus  
Regarding GATT Uruguay Round Implementing Legislation**

Good morning. I've been asked to provide an integrated producer perspective on U.S. legislation to implement the Uruguay Round, and am happy to do so. But at the outset and, as the current AISI Chairman, I would like to make it clear that the views I'll be expressing are in general endorsed by all of AISI's U.S. member companies, be they integrated steelmakers, electric furnace producers, pipe and tube makers or companies that mine iron ore.

AISI greatly appreciates the longstanding position of the Congressional Steel Caucus in support of strong U.S. laws against unfair trade. And based on this fact, our message today is a simple one:

- There are those in the Administration, on the Hill and in other countries who would like a "clean" U.S. bill -- that is, they would like nothing more than for Congress to do the absolute minimum needed to implement the Uruguay Round.
- There are only two problems with this "minimalist" approach.

(i) In spite of the valiant end-game efforts by USTR Kantor and Commerce Under Secretary Garten, virtually every change required by the new GATT Codes would weaken our existing antidumping (AD) and countervailing duty (CVD) laws and Section 301.



(ii) And if we think that we can deal effectively with U.S./Japan trade problems and obtain solutions to other critical trade disputes without having effective laws against foreign dumping and other unfair trade practices, we are kidding ourselves.

- Accordingly, I commend Congressman Regula for developing a set of proposals that represents a broader approach. We need simply to recall the original U.S. negotiating goal, which was to obtain more effective disciplines against unfair trade, and to strengthen our laws to the maximum extent possible consistent with U.S. obligations under the GATT.

- And we need you to communicate your views on this vital matter as soon as possible to Ambassador Kantor, Secretary Brown and Chairmen Rostenkowski and Gibbons.

We know it would help greatly if we could give you our top two or three priorities in terms of implementing legislation. But we are facing numerous areas of potential trade law weakening, and we simply don't believe in taking a "cherry picking" approach.

About three weeks ago, AISI submitted testimony about the Round on behalf of U.S. member companies to the House and Ways Trade Subcommittee. It described the many ways in which our trade laws stand to be weakened.

- The new Antidumping Code contains stricter standing requirements, higher de minimis standards and a 5-year "sunset" provision. As a

result, U.S. cases will be (i) harder to bring, (ii) more difficult to win, (iii) provide less relief for a shorter period of time and (iv) cost more money. At the same time, the new Code fails to prevent circumvention of antidumping actions.

- The new Subsidies Code contains three so-called "green lights" that, for the first time, will make non-actionable under U.S. law injurious subsidies for (i) basic and applied research, (ii) regional development and (iii) certain purchases of environmental equipment. In addition, the definition of subsidy as a "financial contribution by government" could become a loophole, and the new Code doesn't cover input subsidies and export targeting practices.

- Finally, there are the new GATT dispute settlement procedures. These could allow panels of international bureaucrats to employ henceforth binding decisions to overturn the dumping and subsidy laws passed by Congress and also to thwart effective U.S. use of Section 301.

So, the problems are legion but, in the attachment to my statement, we list 6 major areas and 12 ways in which the damage to U.S. trade laws can be minimized if the Administration -- and Congress -- use available discretion under the new GATT to do everything possible to strengthen our laws against unfair trade. I am accompanied by experts who can explain in greater detail the reasons why such changes are needed. I'll attempt to summarize:

- On injury, at least three issues are critical. First, the new GATT negligibility numbers of 3 and 7 percent should be treated as

a "bright line" above which imports will not be deemed negligible. Second, internally consumed upstream products or "captive production" should only be included in the calculation of import market share where such products compete directly with imports. And third, with respect to the new GATT requirement that unfair trade margins below 2 percent not be actionable, we need to clarify that the size of margins is but one of several factors that ITC Commissioners need consider.

- In the AD area, there are also three major issues. First, the new GATT rules on averaging should only apply to investigations, not administrative reviews, and an undue burden should not be placed on petitioners to demonstrate that a pattern of dumping targeted to customers or geographic regions exists. Second, the new Code's definitions of important tests of "sales below cost" should be clarified to accord as much as possible with current U.S. practice. And third, we need to ensure that the new procedure for arriving at "normal profit" does not rely upon abnormally depressed operating results.

- On CVD law, there are two key issues. First, we need to constrain as much as possible, and to end after 5 years, the three new "green lights," and the attachment to my statement discusses how the Congress can do this in an effective manner. And second, we need to ensure that the definition of "financial contribution" is broad enough to include private action compelled by governments.



● With respect to common AD/CVD concerns, there are at least two critical issues. First, we need to establish certain standards, presumptions and verification rules that ensure that the new "sunset" provision doesn't lead to the unwarranted elimination of relief. And second, we need to make sure that Commerce can still use "best information available" in appropriate circumstances.

● In the dispute settlement area, we have one overriding concern -- how to maintain as much as possible U.S. sovereignty. Here, at a minimum, we need to make it clear that, where a GATT panel rules against us, panel decisions will not be automatically implemented until they are reviewed and acted upon by Congress.

● Finally, on Section 301, there are two main issues for steel. First, we need to ensure that, just as USTR has promised time and time again, the United States will continue to use this law where appropriate -- even if it's GATT-inconsistent and when it opens us up to retaliation. And second, we need to create a means by which the U.S. can act unilaterally if necessary to offset foreign cartel and other anti-competitive practices.

In closing, allow me to reiterate five points made last week by one of my colleagues at the international steel trade policy conference held here in Washington.

(i) At enormous corporate, financial and personal cost, and without the benefit of significant U.S. government subsidies, the U.S. steel industry has downsized, restructured and modernized in the

face of global competition from highly subsidized foreign producers.

(ii) These facts shape our trade policy views. And they leave no room for abuse of the U.S. market.

(iii) We strongly support achievement of a comprehensive, effective and enforceable Multilateral Steel Agreement as the best way to deal with the pervasive problem of world steel subsidies. We expect to rely on effective U.S. trade laws to deal with past subsidies and present and future dumping.

(iv) National trade law remedies must always remain available to all countries and, in today's trade law remedies era, effective U.S. trade laws must certainly stay available to U.S. producers as a principal means of dealing with future unfair trade in steel.

(v) And to keep U.S. laws against unfair trade effective in this era of trade law remedies, we'll need the strongest possible bill to implement the Round consistent with our GATT obligations.

We appreciate your support, ask for your help and look forward to working with you to achieve this critical goal.

February 16, 1994

**URUGUAY ROUND IMPLEMENTING LEGISLATION**

In spite of the impressive effort of our trade negotiating team, U.S. trade laws will be weakened as a result of the Uruguay Round Agreement. It will be more difficult for U.S. companies and workers to successfully use all three principal trade laws -- the antidumping law, the countervailing duty law and Section 301. The damage done to these statutes can, however, be minimized if the Administration uses available discretion under the new GATT to do everything possible to strengthen these laws.

**INJURY**

In order to obtain relief under the antidumping and countervailing duty statutes, U.S. companies must prove that the unfair trading practices of other countries are causing them injury. A number of provisions should be included in the implementing legislation to assure that American industry has a fair opportunity to prove its case.

**Negligible Imports**

Currently, the International Trade Commission can determine that unfairly traded imports are not causing injury because they are "negligible". The new GATT agreement specifies that countries that account for less than 3% of total imports are negligible and not causing injury (unless the combination of all the smaller unfairly traded imports constitute more than seven percent of total imports). This new standard should be included in the implementing legislation as a clear numerical test. Imports above these amounts should not be found to be negligible.



### Captive Production

The import penetration ratio -- imports divided by the total U.S. market in a product - is a major factor in the injury analysis at the ITC. In some recent cases, some commissioners have included in the U.S. market for purposes of this calculation, all upstream interim product which was later transformed into a more advanced product by U.S. manufacturers. The effect of this artificial computation is to reduce import penetration by as much as two-thirds. The implementing legislation should require that internally consumed upstream interim products only be included in this calculation when they are shown to directly compete with the imported product.

### Margins Analysis

The new GATT Agreement requires that the ITC Commissioners consider the size of unfair trade margins in their injury analysis and that margins below two percent not be actionable. The implementing bill should clarify that the Commission need only determine whether the unfairly traded imports are a cause of injury. Margins are but one of a number of factors to be considered.

### ANTIDUMPING PROVISIONS

At the insistence of those trading partners that often dump in the United States market, several methodological changes were included in the Agreement. These changes have the effect of reducing the dumping margins in numerous cases. Here again, the new law should minimize the adverse effects of the Agreement.

### Averaging

Under current U.S. practices, the average foreign market prices of a product are compared to specific sales prices in the U.S. This discourages targeted dumping by customers or geographic regions. The new agreement requires comparisons of averages both domestically and in the foreign market unless the Department of Commerce finds a pattern of targeting by the foreign dumper. The implementing legislation should specify that this change only applies to investigations and not to

administrative reviews as provided in the Agreement and that an undue burden not be placed on petitioners to demonstrate the existence of a pattern of targeting.

#### Sales Below Cost

Under current U.S. practice, certain foreign market sales when made at prices less than the cost of production can be disregarded. The new Code adopts broad and confusing definitions of several of the important terms in the U.S. test. The implementing bill should clarify these definitions and stay as close as possible to current U.S. practice.

#### Normal Profit

Under current U.S. practice, when the Department of Commerce is calculating a constructed value, an eight percent profit must be included. The new Agreement eliminates the eight percent adjustment and substitute for it a "normal profit". The implementing legislation should ensure that the procedure for arriving at this "normal profit" does not rely upon abnormally depressed operating results.

### COUNTERVAILING DUTY PROVISIONS

The new GATT agreement provides, for the first time, that U.S. companies cannot take action against certain subsidies, even though they cause injury to our industry in our market. The Implementing bill should be drafted to minimize the harm to the United States.

#### Greenlighting

Three specific kinds of injurious subsidies are no longer actionable under the new Agreement -- regional development subsidies, subsidies for research and applied research, and certain environmental subsidies. The implementing bill should narrowly define all of these greenlight categories. Further, it should provide that subsidies which predate the effective date of the Uruguay Round are not greenlighted; that greenlighted subsidies should be included in the calculation of dumping and in the analysis of injury; that the entire greenlighting

provision will expire after five years; and that it will not be re-enacted if there is evidence of abuse.

### Financial Contribution

Some subsidies may escape action because they do not represent a "financial contribution" within the meaning of the new Agreement. The implementing legislation should make it clear that subsidy programs can be countervailed where they are provided through private action compelled by the government.

### COMMON ISSUES FOR AD/CVD

#### Sunset

Under current U.S. practice, unfair trade duties continue as long as the unfair trade continues. The new Agreement provides that both antidumping and countervailing duties will sunset (terminate) after five years unless the administering authority has conducted a review and has determined that absent continuation of the order, dumping and injury to the domestic industry are likely to continue or recur.

The implementing legislation should contain a standard for the review which reflects the low threshold for continuation of an order intended by the agreement's language -- "likely to lead to a continuation or recurrence of dumping and injury." Reasonable and rebuttable prescriptions should be established by statute. Further, all respondent information should be verified.

It should further make it clear that no existing order should be terminated for at least five years after the new rule goes into effect.

#### Best Information Available

Under current U.S. law, when foreign respondents do not provide needed data, the Department of Commerce may use the best information available to fill information gaps. The new agreement provides that the administering authority should not disregard less than ideal information if the submitter "acted to the best of his ability". The implementing legislation should clari-



fy that the rule of adverse inference should continue to apply and that any exception should be narrowly construed.

### DISPUTE SETTLEMENT

Under current GATT practice, panels of international bureaucrats determine whether actions of member countries violate their international agreements. These decisions, however, are only adopted by the GATT by unanimous agreement. For the first time, under this new Agreement these panel decisions will be automatically adopted. The implementing legislation should clarify that these decisions are not automatically implemented but still require Congressional review and action where a settled interpretation of U.S. law is overturned. Further, it should clarify that Congress will provide criteria for assessing the efficacy of this dispute settlement process as part of a four year review. The Administration should be required to report annually on the fairness of the dispute settlement decisions.

### SECTION 301

Foreign governments are claiming that the new GATT Agreement eliminates the ability of the U.S. to use Section 301 other than with the concurrence of GATT panels. The implementing legislation should provide, consistent with the USTR representations to the Industry Policy Advisory Committee, that Section 301 will be used when appropriate even when such use is GATT inconsistent and will open up the U.S. to retaliation. In addition, the implementing bill should create a mechanism whereby the U.S. can act unilaterally to address burdens on U.S. commerce caused by anti-competitive activity in foreign markets.

### CONCLUSION

The inclusion of these provisions in the Uruguay Round implementing legislation will assure that U.S. companies and workers still have access to effective remedies to redress unfair trade.

Before the  
Congressional Steel Caucus  
U.S. House of Representatives

TESTIMONY OF

WILLIAM J. PENDLETON

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. Chairman and Members of the Congressional Steel Caucus:

My name is William J. Pendleton. I am Director of Corporate Affairs of Carpenter Technology Corporation, a producer of specialty steel. I am former Chairman of the Operating Committee of the Specialty Steel Industry of the United States, a national trade association representing 15 domestic producers of specialty steel. Our industry employs some 35,000 men and women and has annual shipments exceeding \$6 billion. Specialty steel companies represent a unique segment of the U.S. steel industry producing stainless, tool, heat-resisting and electrical steels as well as superalloys and other high technology materials. Our high-technology products possess unique characteristics that permit their use in extreme environments demanding exceptional hardness, toughness, strength and resistance to heat, corrosion and abrasion.

The Administration Should Exempt Specialty Steel from the "Zero Tariff" Negotiation Unless an MSA is Negotiated

I appreciate the opportunity to testify before you today on the results of the Uruguay Round of the General Agreement on Tariffs and Trade. Because of my industry's long-standing struggle against the unfair trade practices of foreign specialty steel producers, I am vitally concerned about how the final agreement negotiated in Geneva will be implemented into U.S. law. Equally as important, the specialty steel industry is deeply troubled that the U.S. government is proceeding forward with the so-called "zero for zero" steel tariffs proposal absent the successful conclusion of a Multilateral Steel Agreement ("MSA").

While our trade negotiators significantly improved the so-called Dunkel draft text in the waning hours of the negotiations, there are various provisions incorporated into the final agreement which will weaken the ability of American industries to protect themselves against dumped and subsidized products. Rather than strengthening domestic trade laws, this agreement makes it more difficult for U.S. industries to file unfair trade cases, more

difficult to obtain affirmative decisions and more difficult to maintain outstanding orders. If the Congress cannot enact implementing legislation which provides domestic industries and their workers with effective relief from unfair trade practices consistent with our GATT obligations, I urge you not to ratify the final GATT agreement.

While we breathed a sigh of relief that the final GATT agreement was an improvement over the original Dunkel draft, we were disappointed, but not completely surprised, that no Multilateral Steel Agreement was completed. However, the U.S. government is now proposing a worldwide reduction of steel tariffs to zero -- including specialty steel -- without the concurrent negotiation of an MSA that would substantially limit steel subsidies. Under this scenario, we could be left with the worst of both worlds: continued, substantial foreign steel subsidies and the loss of the benefit provided by current U.S. duties. Why should we hand zero tariffs to those foreign producers who dump and subsidize products into our market while at the same time, use various ingenious techniques to keep our products out of theirs? Frankly, the logic behind this proposal escapes me and the specialty steel industry will continue to vigorously oppose any effort to negotiate a zero for zero tariff regime without the successful conclusion of a Multilateral Steel Agreement.

We have asked the Clinton Administration and Ambassador Kantor to exempt specialty steel from these tariff cuts. If this is not done, we will discuss with you the possibility of deleting specialty steel tariff cuts under the GATT implementing legislation.

#### Specialty Steel Needs Strong U.S. Trade Laws

Before I highlight provisions that need to be incorporated into the implementing legislation to maintain the effectiveness of U.S. trade laws to the fullest extent possible under the GATT agreement, I want to emphasize that these laws are not just technical niceties that take up space in the U.S. Code. They can actually mean the difference between the survival or demise of an American industry -- even a technologically innovative one. My industry is a case in point. During the past 20 years, we have filed and won more than 20 cases under U.S. trade laws to remedy the injury caused by the unfair trade practices of our foreign competitors. The successful prosecution of these cases has proven critical to our industry's financial health. Without tough laws to rectify the distorted prices of dumped and subsidized foreign steel, the industry would not have been able to maintain our strong technological capabilities and levels of investment.

Despite our success with the dumping and countervailing duty laws, imports of specialty steel products have more than tripled in the past 10 years, with a 50 percent surge in imports last year alone. This dramatic import surge in 1993 cost 5,000 steelworkers their jobs and nearly \$200 million in lost wages. We believe that this recent flood of imports can be traced directly to the staggering \$17 billion of subsidies spent by foreign governments in the past six years to increase their countries' capacity to produce and export specialty steel.



The fact that we have had to resort to legal remedies to ensure our survival does not mean that this industry is noncompetitive. The producers in this sector have maintained their commitment to modern technology, innovation and productivity, even in the face of the continuous assault of unfairly traded imports. Such a commitment is reflected in the sustained capital investment in our production facilities and the ongoing effort to bring new materials to the marketplace.

### The GATT Implementing Legislation Should Address Key Issues

While there are numerous parts of the GATT agreement that weaken current U.S. trade laws, I would like to highlight a few of the more serious problems for your review and suggest some ways to address these issues in the implementing bill:

- **Use of Averaging.** The new GATT Dumping Code requires that foreign market values and U.S. prices in investigations must be compared transaction-to-transaction or average-to-average. The GATT requirement to use averages on both sides of the dumping calculation is contrary to the current practice of the Commerce Department, which permits average foreign prices to be compared with U.S. prices on individual transactions. By changing this practice, foreign producers will be allowed to offset dumped sales with undumped sales and unfairly diminish their dumping margins.

However, because the new GATT Code does not disturb current U.S. practice in administrative reviews, the implementing legislation should ensure that Commerce may continue to compare weighted average foreign market values with individual U.S. prices in the post-investigation phase of the proceeding.

- **Sunset.** Unlike existing law, the GATT agreement requires that existing and future dumping and countervailing duty orders be revoked after five years, unless there is proof that the termination of the duty would likely lead to continuation or recurrence of the unfair trade practice and injury. Consistent with promises made to domestic industries during the Uruguay Round negotiations, all outstanding orders should be treated as entered on the date the agreement takes effect, which is projected to be July 1, 1995. In that way, the "revocation" review need not take place for an additional five years, or July 1, 2000.

- **Definition of Subsidy.** The definition of subsidy in the final agreement generally parallels current U.S. law by encompassing both direct and indirect subsidies. The U.S. Congress should ensure that indirect subsidies, such as exemptions from regulations and governmentally-imposed export restraints on raw materials and other inputs, continue to be actionable.

- **Green Light Subsidies.** Contrary to existing law, the GATT Subsidies Code makes several types of subsidies nonactionable. Given the fungibility of money, these provisions must be carefully monitored to prevent foreign governments from reclassifying subsidies into nonactionable categories and thereby circumventing the countervailing duty

law. The implementing legislation should therefore require that subsidies granted in excess of the allowable limits be actionable in full -- not just to the extent of the amounts exceeding the allowable limits. To prevent abuse of the green-lighted environmental subsidies, the legislation should ensure that the one-time 20 percent limitation on such subsidies applies to each facility, as opposed to each law and/or regulation enacted. Finally, the authorization for green light subsidies should terminate no later than five years after the establishment of the World Trade Organization, the new entity created by the GATT to implement the Uruguay Round agreements, which is expected to take place on July 1, 1995.

The above suggestions address changes in U.S. law required by the GATT. However, since the Uruguay Round has diminished the effectiveness of U.S. trade laws, the Congress should take affirmative steps to enhance the remedies available to domestic industries suffering from unfair trade practices. For example, domestic industries need -- and deserve -- compensation for the injury inflicted by dumped goods. The implementing legislation should therefore provide compensation awards to U.S. companies from the monies collected under dumping orders.

These and other changes in the implementing legislation are essential before the Specialty Steel Industry of the United States can support congressional ratification of the final GATT agreement. I encourage you to give serious thought to the future of vital industries, such as specialty steel, when you consider the legislative provisions that will govern U.S. trade law into the 21st century.

Thank you for your attention.

STATEMENT OF JAMES F. COLLINS, PRESIDENT  
STEEL MANUFACTURERS ASSOCIATION  
ON URUGUAY ROUND LEGISLATION BEFORE THE STEEL CAUCUS  
U.S. HOUSE OF REPRESENTATIVES, MARCH 2, 1994

THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU THIS MORNING, TO EXPRESS THE VIEWS OF THE STEEL MANUFACTURERS ASSOCIATION. THE RECENTLY CONCLUDED URUGUAY GATT ROUND RESULTED IN SOME SUCCESSES AND SOME SETBACKS FOR THE STEEL INDUSTRY. HOWEVER THE TIME FOR DISCUSSIONS AND OBJECTIONS TOWARD THE ROUND ITSELF ARE OVER.

NOW IS THE TIME TO FOCUS ON THE IMPLEMENTING LEGISLATION TO MAKE CERTAIN THAT U.S. TRADE LAWS REMAIN AS STRONG A WEAPON AS POSSIBLE TOWARD ENSURING OPEN AND FAIR TRADE ACROSS THE GLOBE. TO THAT END, I WOULD LIKE TO LIMIT MYSELF TO A DISCUSSION OF THREE IMPORTANT ASPECTS OF THE IMPLEMENTING LEGISLATION: (1) THE DISPUTE SETTLEMENT PROCEDURE; (2) EXPORTER SALES PRICE (OR DUTY AS A COST); AND (3) EXPANSION OF THE RELATED PARTIES DEFINITION.

**FIRST, DISPUTE SETTLEMENT:**

WHEN THE URUGUAY ROUND IS FULLY IMPLEMENTED, THE GATT DISPUTE RESOLUTION PROCESS WILL BECOME SIGNIFICANTLY MORE IMPORTANT. THE UNITED STATES WILL NO LONGER BE ABLE TO BLOCK GATT PANEL DECISIONS. THIS SIGNIFICANTLY INCREASED ROLE FOR GATT DISPUTE PANELS MAKES IT NECESSARY TO ENSURE PUBLIC CONFIDENCE IN THIS SYSTEM AND TO GUARANTEE THAT THE RIGHTS OF PRIVATE PARTIES ARE ADEQUATELY REPRESENTED. CURRENTLY, PRIVATE PARTIES CANNOT ADEQUATELY ASSIST GOVERNMENT OFFICIALS



IN PREPARING AND PRESENTING ARGUMENTS TO THESE INTERNATIONAL DISPUTE RESOLUTION PANELS BECAUSE THEY DO NOT HAVE ACCESS TO INFORMATION AND DOCUMENTS WHICH ARE RELEVANT TO THE CASE. THIS ISSUE WILL BE OF SUPREME IMPORTANCE TO ALL OF THE STEEL MANUFACTURERS WHEN THEIR DUMPING AND COUNTERVAILING DUTY DETERMINATIONS ARE CHALLENGED INTERNATIONALLY.

WE PROPOSE TO CREATE A SYSTEM, SIMILAR IN MANY RESPECTS TO THE CURRENT CONFIDENTIALITY PROTECTIONS ALREADY IN PLACE AT THE DEPARTMENT OF COMMERCE AND THE ITC, THAT WOULD ALLOW FOR THE COUNSEL OF INTERESTED PRIVATE PARTIES IN SUPPORT OF THE UNITED STATES GOVERNMENT'S POSITION TO OBTAIN ALL DOCUMENTS SUBMITTED DURING THE INTERNATIONAL DISPUTE PROCEEDING, WHILE MAINTAINING THEIR CONFIDENTIALITY. IN THIS MANNER, PRIVATE PARTIES CAN BE ASSURED THAT THEIR INTERESTS CAN BE VIGOROUSLY PROTECTED AND COUNSEL WILL HAVE ACCESS TO THE INFORMATION NECESSARY TO ASSIST THE U.S. OFFICIALS WHO WILL DEFEND ANY DECISION BEFORE AN INTERNATIONAL TRIBUNAL.

**EXPORTER SALES PRICE:**

PREVIOUS GATT ANTIDUMPING CODES CONTAIN LANGUAGE WHICH ATTEMPTS TO DETER PRODUCE ABSORPTION OF ANTIDUMPING DUTIES AND CONTINUED SALES AT DUMPED PRICES. U.S. LAW HAS A SIMILAR PROVISION. HOWEVER THIS RULE IS OFTEN SKIRTED BY IMPORTING GOODS THROUGH A RELATED PARTY. THE RELATED PARTY THEN PAYS

THE ANTIDUMPING DUTY UPON IMPORTATION BUT TRANSFERS THE MERCHANDISE TO AN UNRELATED PARTY WITHOUT RAISING THE PRICE TO COVER THE DUTY PAID. CURRENTLY, NO CHECK EXISTS AGAINST THIS SORT OF "ABSORPTION," DESPITE THE FACT THAT THE DUMPING LAWS WERE DESIGNED WITH THE INTENTION THAT THESE DUTIES WOULD BE PASSED ALONG TO THE CONSUMER SO THAT PRICES WOULD ADEQUATELY REFLECT THE ECONOMICS OF PRODUCTION. THE NEW CODE ALLOWS FOR EXAMINATION OF THE RESALE PRICE TO THE FIRST UNRELATED PARTY TO ENSURE THAT THE DUTY COST IS BEING PASSED ALONG.

WE PROPOSE LEGISLATION THAT WOULD REQUIRE THAT THE EXPORTER CERTIFY THAT THE DUMPING DUTIES WERE PASSED ALONG TO THE FIRST UNRELATED PURCHASER. IF THE EXPORTER FAILS TO CERTIFY THAT THE ANTIDUMPING DUTY IS PASSED ALONG, THEN THE DUTY WILL BE INCREASED BY THE AMOUNT OF THE DUTY THAT IS NOT PASSED ON. THIS PROVISION, IF ADOPTED, WOULD PREVENT FOREIGN MANUFACTURERS FROM ABSORBING THE DUMPING OR COUNTERVAILING DUTY.

#### **RELATED PARTIES:**

MANY COMPANIES MANIPULATE COSTS OR PRICES THROUGH TRANSACTIONS WITH COMPANIES WITH WHICH THEY HAVE CLOSE RELATIONSHIPS. THIS WAS A PROBLEM IN THE STEEL CASES AND IT IS OFTEN IN THE BEST INTEREST OF PETITIONERS THAT THESE

TRANSACTIONS BE DISCARDED. HOWEVER, CURRENT U.S. LAW DOES NOT FULLY RECOGNIZE THE POTENTIAL FOR MANIPULATION IN MANY OF THESE RELATIONSHIPS. INSTEAD, U.S. LAW NARROWLY DEFINES THE SITUATIONS WHERE "RELATED PARTY" TRANSACTIONS CAN BE DISREGARDED. THE NEW GATT ANTIDUMPING CODE HAS A MORE COMPREHENSIVE RELATED PARTY DEFINITION, WHICH, IF ADOPTED IN U.S. LAW, WOULD PERMIT THE U.S. ADMINISTERING AUTHORITIES TO EXCLUDE A WIDER RANGE OF DATA THAT MAY BE NON-REPRESENTATIVE OR MAY HAVE BEEN MANIPULATED THAN IS CURRENTLY THE CASE.

WE SUGGEST LEGISLATION THAT WOULD SIGNIFICANTLY BROADEN THE DEFINITION OF RELATED PARTIES AND, THEREFORE, ALLOW THE INFORMATION GENERATED FROM SUCH TRANSACTIONS TO BE DISREGARDED AT THE DISCRETION OF THE AUTHORITIES. OUR DEFINITION WOULD EXPAND THE CONCEPT OF RELATED PARTIES TO INCLUDE COMPANIES THAT HAVE: (A) INTERLOCKING EMPLOYEES; (B) JOINT OR CO-VENTURES; (C) AGENT-PRINCIPAL RELATIONSHIPS; (D) CAPTIVE PARTY RELATIONSHIPS (I.E., WHERE ONE PARTY IS OVERLY DEPENDENT ON THE OTHER) AND; (E) SITUATIONS THAT UNDER U.S. LAW WOULD BE CONSIDERED VERTICAL INTEGRATION.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE STEEL MANUFACTURERS ASSOCIATION. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE REGARDING OUR CONCERNS.



**STATEMENT OF ELIZABETH B. CADY, VICE PRESIDENT  
STEEL SERVICE CENTER INSTITUTE  
STATEMENT BEFORE THE CONGRESSIONAL STEEL CAUCUS  
MARCH 2, 1994**

I am Elizabeth Cady, Vice President and Director of Governmental Affairs for the Steel Service Center Institute (SSCI), a trade association representing the interests of the North American steel service center industry.

I appear today on behalf of our 400 U.S. member companies who, through 1,200 locations nationwide, employ some 100,000 workers and serve the metal needs of an estimated 300,000 American manufacturers and fabricators. With \$24 billion in annual sales, service centers are by far the largest single customer group of domestic mills. According to AISI's most recent 1994 figures, steel service centers have already purchased 21 million tons of finished steel products, compared to the second largest customer group -- the auto producers -- who have purchased about 12 million tons.

I appreciate the opportunity to present the views of American steel service centers on the important question of implementing the results of the Uruguay Round of multilateral trade negotiations.

Evaluating the Uruguay Round

Overall the Uruguay Round is a very good package that deserves prompt approval by Congress. For our country as a whole -- and for many of our customers -- the Round will improve market access, provide more certain rules for trade and eliminate some of the present inadequacies of the dispute settlement mechanism. It will be a plus for the U.S. and world economy. In a derivative sense, it will be good for those who produce, process, distribute, and use steel mill products.

But we recognize that the U.S. was not completely successful in attaining its objectives in the areas of antidumping and subsidies. We anticipate that an effort will be made to win back in implementing legislation some of the ground lost at the negotiating table. Although SSCI supports strong unfair trade rules as a matter of policy and principle, we are leery of attempts to improve them by tinkering around the edges of the deal struck in Geneva. Instead, SSCI believes Congress would do well to make only those amendments to our law as are required by the Final Act of the Uruguay Round. At the same time, we would ask Congress to commit to a thorough review of all our trade statutes.

Our trade laws are far from perfect. They are complex, difficult and cumbersome to use, and outrageously expensive to all parties. They should be reviewed in their entirety. It

is simply not possible to do that within the constraints of the fast-track, no-amendment procedure on which the Uruguay Round implementing legislation will be considered. Instead, a good review should be based on a full public airing of all issues. This is incompatible with the fast track.

Of course, Congress carries a double burden in this area: it must ensure that our trade laws are as efficient and effective as possible; at the same time, it must take care not to enact provisions that could be mirrored by foreign governments to the detriment of American exporters, including major customers of service centers and steel mills. This objective, too, requires careful study and debate.

But let me elaborate on the need for expanding debate of trade laws by focusing on just one proposal that I believe will be addressed today -- development of a compensation mechanism. If such a mechanism were to be introduced in U.S. law, I would hope that Congress would provide some access to it for steel service centers damaged by foreign dumping.

I believe the Caucus is very familiar with the level of vulnerability service centers experience with regard to unfairly priced imports. As holders of some six to seven million tons of inventory bought and paid for, service centers can be devastated by downward movements in prices. When surges of imports depress domestic price levels, inventory losses can threaten a company's future, particularly if the company is small as so many of SSCI's members are. This devaluation of inventory occurs long before the mill has lost an order. For each \$1 drop in prices, our industry's collective balance sheet can take a \$6-7 million hit! Needless to say, service centers view themselves as the first victims of unfairly trade imports.

But since service centers generally are not be considered to be the "manufacturer of a like product", they lack standing under U.S. antidumping and countervailing duty laws. Consequently, service centers do not get relief from unfair pricing unless and until mills decide to act. They can be severely affected by foreign dumping, yet have no means to defend themselves.

Monetary compensation for damages would be a step in the right direction. For example, a portion of the funds collected in duties could be used to reimburse inventory losses arising from unfair trade. A thorough examination of this concept might produce other viable strategies for dealing with the damage caused by unfair imports.

### What Can Be Done

Although SSCI does not see Uruguay Round implementing legislation as an appropriate vehicle for significantly revising our trade law, we clearly believe that the Caucus can help the industry in a number of ways during the coming months as the implementing legislation is considered. We request two actions.

First, pass a sense of the Congress resolution regarding completion of the multilateral steel agreement, or as it's more commonly called, the MSA. This resolution should indicate

- That MSA negotiations should be resumed as soon as possible and concluded by the end of 1994;
- That a principal objective should be to ensure the broadest participation possible, including the developing and emerging market-economy countries; and finally,
- That an acceptable MSA would raise the level of discipline over subsidies in the long run, ensure adequate protection against disruption from any continuing subsidies, provide the basis for taking action against private anticompetitive actions, create alternative means of dealing with import surges, encourage privatization of state-owned mills and facilitate the transition of non-market economy steel producers.

In our assessment, the MSA can only be revived if the U.S. is willing to demonstrate its leadership. As the discussion at last week's international steel conference in Washington amply demonstrated, there is at the moment barely any middle ground on which to build an agreement acceptable to major steel producing and exporting countries. Nevertheless, we all concur that the MSA is the best approach yet devised for achieving levels of discipline in the steel sector higher than the usual, least common denominator GATT rules. It is worth one more try to achieve an agreement.

As the MSA talks lost all momentum once it was agreed to de-link them from the market access negotiations last November, it is urgent that the Congress help the process by establishing a deadline and sending a clear message to the world of strong congressional interest in a steel agreement. Coming at this moment, particularly if Congress sends the message that it will not only implement the Uruguay Round, but also take a positive step toward revitalizing current U.S. trade law, the signal to the rest of the world would be:



negotiate now or risk tougher unfair trade rules as a result of a general trade bill. We can think of no better way to goad trading partners back to the negotiating table.

The issues standing in the way of an MSA are well known, even if they have not been properly and fully discussed yet. A meaningful deadline would put pressure on all parties to stop posturing and begin real negotiations. This could be embodied in a sense of the Congress resolution and progress toward that end should be monitored closely by the Caucus.

Second, we would appreciate it if the Caucus would request the Administration to seek agreement with Canada and Mexico to have service centers excluded from antidumping investigations unless they themselves are producers of the product. American service centers do occasionally export to other countries, but the major problem arises in the ever more integrated North American market. Many of our members have expanded their business in Canada and anticipate doing so in Mexico as well, to take advantage of the NAFTA.

The essential problem arises from Canadian antidumping procedures. Revenue Canada sends detailed exporter questionnaires to U.S. service centers whenever they have shipped a product subject to an antidumping investigation. That presents the service center with a dilemma: spend exorbitant sums to create a required data base and to hire an attorney to defend yourself or accept the use of "best available information" (a euphemism for the most adverse information). In a number of recent Canadian investigations, many service centers opted for the latter course. The result was astronomical antidumping margins that they are now stuck with.

Ironically, in some cases the American mill supplying the steel for sale to Canada has received a much lower dumping margin. After adjusting its price to fair value, the mill will naturally look for an alternative means of delivering the steel to its Canadian customer. That could mean direct sales; more likely, it will entail a sale to a Canadian service center, thus forfeiting the value added that otherwise would be earned in the United States.

The solution might be very simple: for any product subject to a dumping order in Canada (or Mexico), require service centers to identify their supplier and have their supplier's fair value applied as the basis of the duty. This would actually simplify customs procedures by reducing the number of individual rates in effect. As a result, border crossings could be easier and quicker without in any way lessening the remedy against unfair prices.

If we do not correct this problem now, the gradual elimination of steel tariffs on a most-favored-nation basis will place American service centers, particularly smaller ones, at an increasing disadvantage against third country exporters to Canada who are free of antidumping duties.

In closing, let me repeat that SSCI supports implementation of the Uruguay Round. Even more important, SSCI supports strong unfair trade laws but does not see them as a panacea, as they deal with symptoms only and apply remedies only in the future. With higher de minimis levels, a larger greenlight subsidy category and the escalating cost of investigations, we believe the essential shortcomings of the statute cannot easily be improved by marginal changes. Thus we propose a few immediate steps to put new life into the MSA and ease our problem with Canadian dumping procedures. Following implementation of the Uruguay Round results, SSCI urges a thorough review of all our trade statutes with a view to making it simpler, easier, and faster for injured industries to get effective relief.

## House Steel Caucus

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United Steelworkers of America  
Uruguay Round  
•

March 2, 1994

The Uruguay Round represents the most recent set of multilateral negotiations designed to eliminate barriers to trade. For steel the zero-for-zero tariff reductions are a significant step in that direction, although the U.S. marketplace has by far been a most open market in the global flow of steel mill products. Certainly, one of the Uruguay Round's contributions is the fact that certain trade sectors will for the first time be put under GATT disciplines. As U.S. trade opportunities expand in the area of services, intellectual properties and agriculture barriers to these trade flows needed to be moderated and disciplined. The major thrust of the Round is to enhance U.S. export opportunities. While we do not expect to see exports in steel mill products as a major component for our demand market, exports of steel-bearing products--indirect steel exports--hopefully will experience improvements.

However, the USWA focused its attention upon the import sensitivity of our domestic steel mills. Over the period during which the Uruguay Round was being negotiated, the competitive and productivity profile of the American steel mills was substantially enhanced, so that today it is extremely cost-competitive in our own market. Nevertheless, the USWA is strongly concerned that trade competition be conducted according to the rules of the game. During the final stages of the Uruguay Round a draft proposal, relating to the GATT anti-dumping and anti-subsidy codes, would have necessitated a substantial rewrite and weakening of American trade laws which are designed to address unfair trade practices. USWA insisted that adoption of the "Dunkel Draft" was not an appropriate trade-off for other advantages which advanced global trade. USWA joins with the steel industry in expressing relief that the Dunkel Draft was significantly modified. Nevertheless, the changes, which were negotiated in Geneva, are such that their interpretation in the implementing legislation is critically important. What we did not lose in Geneva should not be lost in Congress.

There are a number of features in the implementing legislation which the Steel Caucus should monitor closely:



- Subsidies for research, environment and regional development will become allowable and not actionable. These subsidies have very narrow purposes. The implementing legislation should assure that any subsidies outside of these narrow confines will remain actionable.
- Unfair trade duties, while subject to a five-year sunset, can continue if unfair trade practices are likely to lead to a continuation of dumping and injury. Our statutes must not give this provision a too narrow interpretation.
- In the last filings by the steel industry, the ITC gave a very restrictive interpretation of import penetration ratios. The implementing legislation should reverse that decision on "captive production." Additionally, the ITC should be required to adopt the new GATT's definition of negligible imports.

There are other important technical changes which the Caucus should review. There is, however, another feature which the Union would call to your attention. When the Congress gave the President the authority to participate in the Uruguay Round, it recommended that there be a linkage between trade and labor standards. Violations of internationally recognized labor rights should be cause for trade sanctions. This was not a new concept since it was already incorporated in U.S. trade laws, e.g. GSP, CBI and OPIC. However, our USTR trade representatives were unable to keep the issue on the bargaining table. Since that time a subsequent trade agreement has been signed – NAFTA. In that arrangement there is explicit linkage between labor and environmental standards.

The current Uruguay Round will be formally consummated on April 15 in the Marrakech Ministerial Declaration. USWA urges that the participating countries agree to an establishment of a standing committee on labor standards under the new World Trade Organization (WTO) and that U.S. implementing legislation reflect the measures needed to promote such a committee. The next GATT Round must be in a better position to incorporate the linkage between trade and labor rights. Its past experience of failure to do so must be avoided.

Presentation by John J. Sheehan  
Legislative Director  
United Steelworkers of America  
March 2, 1994

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SUBMISSION OF  
 STEVEN B. LEHAT  
 ON BEHALF OF DYD CO., A WHOLLY OWNED SUBSIDIARY OF BACARDI  
 ON THE URUGUAY ROUND  
 TO THE SUBCOMMITTEE ON TRADE  
 HOUSE WAYS AND MEANS COMMITTEE  
 FEBRUARY 28, 1994

On behalf of DYD CO. (formerly Lloyds Electronics, Inc.), a wholly owned subsidiary of Bacardi Corporation, I am submitting the following comments recommending that H.R. 2629, "Customs Technical Tariff Corrections Bill" be enacted as part of the Uruguay Round implementing bill. This is a technical correction of the kind usually included in an omnibus trade bill. However, since the Uruguay Round bill is the only trade bill expected to be enacted in this session, we suggest that H.R. 2629 be included in that bill.

#### TECHNICAL TARIFF CORRECTION

H.R. 2629 remedies a Customs Service computer error that resulted in the mistaken printing of liquidation notices covering entries for which final duties had not yet been determined. Customs admits the error and has recommended passage of the legislation. The legislation is revenue neutral and probably represents a unique situation since the Customs Modernization Act has since remedied practices that led to this occurrence in the first place.

DYD Co. (formerly Lloyds Electronics Inc.) of Bacardi imported merchandise into the United States in 1984. Liquidation of the Customs entries covering nine shipments was suspended by the involved import specialist. Unbeknownst to the import specialist as well as to the importer, Customs' computer printed liquidation notices for these entries in 1985. In 1990, the import specialist discovered that the liquidation notices were printed, and related this fact to Bacardi. Shortly thereafter, a petition was filed with United States Customs requesting that the notices be deleted so that liquidation could ultimately proceed at a correct rate of duty. It was respectfully submitted that since no liquidations ever took place, the liquidation notices should rightfully be withdrawn.

H.R. 2629 will achieve relief for DYD by resolving a technical legal issue regarding timeliness of the petition. The need for technical corrections legislation will likely be unique to this case since the recently enacted Customs Modernization Act regarding notification should prevent any recurrence.

Upon verification with staff member Tim Reiff, it was found that there is no known record, with Customs or any other entity, that this matter was brought to DYD's attention before expiration of the period in which Customs, as a matter of policy, extends administrative redress. Years later, when this was discovered by the company as well as by the Customs Service, the agency took the position that it was then too late to consider a petition to correct this error. However, they suggested that the appropriate vehicle for redress would be legislation. H.R. 2629 was introduced in response to this advice.

#### LEGISLATIVE SUPPORT BASED ON EQUITY

Attaching H.R. 2629 to the Uruguay Round implementing legislation appears to be the best way to remedy this injustice once and for all. Where there is an admitted error, corrective legislation is particularly deserving of prompt consideration. Since the implementing bill for the Round may be the only vehicle for passage in 1994, the opportunity should not be missed to address this deficiency by including H.R. 2629.

#### LEGISLATIVE SUPPORT BASED ON REVENUE NEUTRALITY

We have been told that passage of this bill would be considered revenue neutral and thus does not require offsetting revenue. It is unclear at this time whether the final duty assessed on the import would be more or less than the rate included in the incorrectly printed liquidation notices. This legislation does nothing more than maintain the status quo regarding liquidation of the nine entries in question. The amount of duties owed the government upon liquidation has yet to be determined. Neither the legislation nor our client's petition in any way affects what this amount will ultimately be.

Further, Customs recognizes that monies which were deposited at the time of entry likely differ from that which will be assessed. The government does not anticipate keeping anything in excess of what is due.

This legislation will enable Customs to remedy an admitted error by removing a legal impediment to doing justice, to the detriment of neither the government nor the public.



## STATEMENT OF

THE EMERGENCY COMMITTEE FOR AMERICAN TRADE ("ECAT"),  
CARGILL, INCORPORATED, HEWLETT-PACKARD COMPANY AND  
INTERNATIONAL BUSINESS MACHINES CORPORATION

COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON TRADE

FEBRUARY 8, 1994

**INTRODUCTION**

ECAT supports a strong, effective and fair antidumping law that takes into account the interests of U.S. exporters as well as U.S. petitioning industries. To that end, the implementing legislation must reflect the mandatory provisions of the GATT Antidumping Agreement which the U.S. agreed to in Geneva. For example, the Antidumping Agreement requires that the dumping margin be based on a "fair comparison" of the export and home market prices. The Administration must therefore ensure that the implementing legislation provides for a truly fair comparison and reject proposals that maintain the "tilts" in current U.S. law.

Some proposals are being put forward that would contribute to the goal of a fair and effective antidumping law. For example, ECAT supports the inclusion of a short supply provision in U.S. law, which would permit U.S. manufacturers to import needed imports free of antidumping duties on products if there is no domestic supply of those inputs. Other proposals are being discussed that would run counter to the goal of a fair and effective antidumping law and should not be included in the U.S. implementing legislation. For example, the treatment of antidumping duty deposits as a cost would unfairly create or increase margins and would mean that exporters have to raise their prices in the U.S. market in excess of the margin of dumping in order not to be found dumping. In addition, proposals suggesting that the calculation of profit be based only on profitable sales are contrary to the normal business practice of defining profits as the difference between all costs and all revenues on sales.

U.S. exports were the most frequent target of foreign antidumping actions overseas during the period 1989-1993 (see attached chart). We can be sure that our trading partners are monitoring closely the U.S. implementing legislation. If the Administration gives in to trade-restrictive pressures, we run the risk that foreign governments will avoid meaningful reform of their antidumping laws. We can also be sure that foreign governments will adopt the most objectionable aspects of our laws, as they have done in the past. U.S. exporters must not be sacrificed in this fashion.

The following is a discussion of specific issues and proposals for the antidumping implementing legislation.

**A. DEFINITIONAL ISSUES****1. DE MINIMIS LEVEL**

The Agreement reflects a concern with the disruptive effect of an investigation and the imposition of duties, especially when the actual level of dumping is so small, or the volume of imports is so minimal, that investigation is unwarranted. In such circumstances, the investigation must not be initiated or, if already initiated, the investigation must be terminated.

During the negotiations, there was considerable debate over what constitutes a *de minimis* market share. All of the main Parties agreed that there was some level at which imports could not be causing material injury to the domestic industry. The Dunkel Draft defined it as less than one percent of the domestic market. Under current practice, the U.S. and the European Union generally dismiss cases on the basis of *de minimis* market share when imports account for less than one percent of the domestic market. Australia has stated, regarding 10 percent of the domestic market, that it had "difficulty in accepting that import penetration of such a magnitude was sufficient to cause material injury." In Canada, cases have been dismissed where the imports accounted for as much as 4.6 percent of the Canadian market.

Thus, the three percent of imports standard provided by the Agreement reflects the consensus of the Parties on the minimum level of imports that could possibly cause material injury. It does not imply that imports over that amount are necessarily sufficient to cause material injury. Moreover, because this *de minimis* level is so low, the Agreement requires that an investigation not be initiated (and must be terminated if initiated) if imports are below the specified level. Therefore, in determining whether to go forward with an investigation (or whether to make a negative injury determination), the administering authority must make a decision on the basis of the information available to it without placing a burden on petitioners or potential respondents. If the information is not complete but the evidence available supports a reasonable inference that the imports are *de minimis*, the investigation must be terminated.

In the event of a case involving threat of material injury, "potential imports" are those imports that are imminent and about which information is not speculative.

There was also considerable debate during the negotiations over what constitutes a *de minimis* margin of dumping. After much debate, the Parties agreed that the appropriate *de minimis* level worldwide should be at least two percent. A margin of two percent is less than many of the daily and quarterly exchange rate fluctuations, even among fairly stable currencies. Therefore, in looking at price comparisons for sales in different currencies, a two percent *de minimis* level is reasonable.

Article 18.3 of the Agreement states that Article 5.8 applies to both investigations and reviews. U.S. law currently recognizes the possibility of a *de minimis* dumping margin but does not set a specific level. Department of Commerce practice has been to find a margin of less than 0.50 percent to be *de minimis* in both investigations and reviews.

The legislation should conform U.S. law and practice to the Antidumping Agreement with respect to *de minimis* margins and *de minimis* imports. If substantial evidence in a specific case demonstrates that a larger margin of dumping is *de minimis* in that industry, then the administering authority may determine that the higher margin is *de minimis* and terminate the investigation or make a negative determination of dumping. Similarly, if the administering authority finds that the level of imports is *de minimis*, the legislation should provide for the immediate termination of the investigation.

## 2. LIKE PRODUCT DEFINITION

The legislation should ensure that the U.S. definition of like product conforms to the GATT definition in all respects. The amended definition should not significantly change the meaning of like product under U.S. law but should clarify that meaning. Disputes have arisen concerning the exact meaning of the current statutory definition. Therefore, the legislation should clarify that meaning.

The reason for defining "like product" is to delimit the U.S. industry to be examined by the Commission in making its determination of injury to a domestic industry. The Commission should limit its examination to the domestic industry producing a product that is like the class or kind of imported article subject to investigation. Like need not be completely identical but must be so similar in characteristics and have such minor differences that there is direct competition between the imported and the domestic product. For example, all women's cotton skirts should be considered like products even though the imported products may come in different styles or sizes from the domestically produced skirts. The Commission, however, should not define like products so broadly that they include products with substantial differences that affect their competitiveness with each other and that are not substitutable. Products that have different specific uses should not be considered like. For example, in Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From The People's Republic of China, the Commission found that iron glands and iron waterworks fittings were separate like products because, although they shared users the uses were different, they were not interchangeable, and they had different purchaser and producer perceptions. This was the case despite similar production processes and channels of distribution.

### 3. CLASS OR KIND OF MERCHANDISE

The term "class or kind" of merchandise refers to all of the imported merchandise from the specific country which is the subject of an antidumping investigation or administrative review. The absence of a definition of the term "class or kind of merchandise" in the statute has caused difficulties in past cases for all parties -- the Commerce Department, petitioners and respondents.

The statute should be amended to define "class or kind of merchandise" so as to identify the imported merchandise to be examined by the Commerce Department in making its fair value determination. The definitional criteria should be based on Diversified Products Corp. v. United States, 572 F. Supp. 883 (Ct. Int'l Trade 1983)). Thus, in determining whether merchandise constitutes a "class or kind," the administering authority should be guided by the following four criteria: (1) whether the merchandise shares the same, or very similar, physical characteristics; (2) whether the merchandise has the same end use or application; (3) whether the ultimate purchasers have the same expectations of the merchandise; and (4) whether the merchandise is sold in the same or similar channels of trade. Each of these four criteria need not necessarily be satisfied in order for the administering authority to determine that the merchandise in question constitutes a single "class or kind." Indeed, there are likely to be products and industries to which certain of these criteria do not apply.

With respect to the physical characteristics, merchandise in the same "class or kind" need not have identical physical characteristics; however, the physical characteristics should be sufficiently similar, and any minor physical differences that exist should not significantly affect the end use of the merchandise or the expectations of the ultimate purchaser. In examining the physical characteristics of the merchandise, the administering authority should consider whether the merchandise is produced by means of the same or similar production process.

With respect to end use, merchandise in the same "class or kind" should have the same, or very similar, ultimate end-use applications. In examining the issue of end-use application, the administering authority should consider the functional interchangeability and substitutability of the merchandise in question.



With respect to the expectations of the ultimate purchaser, merchandise of the same "class or kind" should lend itself to the same, or very similar, expectations by the ultimate purchaser. For many products, purchaser expectations may be closely related to the ultimate end use of the merchandise and the potential interchangeability of the products.

In considering whether the merchandise is sold through the same, or very similar, channels of trade, the administering authority should take into account the commercial realities of the product and industry in question. For example, the administering authority should not assume that products sold through a diverse group of distributors are necessarily sold through the same channel of trade; rather, the administering authority should examine the nature and function of the various distributors in making its assessment.

#### 4. RELATED PARTY DEFINITION

Current U.S. law does not define the term "related" for purposes of establishing the domestic industry. For other purposes, such as for determining when to use exporter's sales price for United States price and when input prices for calculating constructed value may not be relied on, U.S. law sets numeric cut-offs or other tests for identifying related parties. These inconsistencies within the statute have no stated rationale and add uncertainty to antidumping proceedings.

Footnote 11 to Article 4.1, adopted in a non-contentious manner in the Uruguay Round negotiations, incorporates into the Antidumping Agreement the understanding on the word "related" reached in 1981. "Report to the Committee on Anti-Dumping Practices and to the Committee on Subsidies and Countervailing Measures by a Joint Group of Experts on the Definition of the Word "Related," adopted by the Committee on Subsidies and Countervailing Measures on 30 October 1981," BISD 28S/33 (1982).

Implementation of footnote 11 would standardize the concept of related persons throughout the antidumping statute. This reflects the concept of related persons applied under other U.S. statutes, such as the Securities Act of 1933 and the Securities Exchange Act of 1934. The regulatory language interpreting these statutes defines "control" to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. §§ 230.405, 240.12b-2 (1993). The amendments to the Tariff Act of 1930 should further provide that where the level of ownership or other interest in one person by another exceeds 50 percent, control is automatically presumed.

#### 5. INTERESTED PARTY DEFINITION

During the negotiations, it was recognized that the imposition of antidumping duties has many unintended consequences within the economy of the country imposing the duty. Therefore, articles 6.11 and 6.12 were included to provide the minimum definition of interested party and to permit countries to include other parties that may be affected by the imposition of antidumping duties within the definition of interested parties, such as unions and industrial users of the subject merchandise.

The November 1993 Commission study, The Economic Effect of Significant U.S. Import Restraints, indicated that the imposition of antidumping duties (or other import restraints) can impose significant costs on other sectors of the economy, at times making those sectors less competitive with other producers worldwide. This harm can outweigh any benefit to the U.S. industry producing the product like the imported product. Moreover, with increasing frequency, antidumping orders issued

are so broad as to cover products not produced in the United States, which can result in serious harm to a wide variety of small and large U.S. producers. Thus, the imposition of antidumping duties can result in net losses to the economy and to jobs in the United States.

The current law does not provide a process whereby the views of all affected parties can be fully heard. Industrial users of merchandise subject to antidumping investigations have a substantial interest in the outcome of antidumping investigations and can be adversely affected. However, such parties have had little ability to participate meaningfully in such investigations because they have not fallen within the statutory definition of interested parties. Oddly enough, however, wholesalers are permitted to be interested parties under current law.

Therefore, in order to permit all parties with substantial interest in such investigations to participate, industrial users should be added to the definition of interested party. Such an amendment to the law is consistent with the Antidumping Agreement, Article 6.12, which requires that such parties shall have the opportunity to present information relevant to an investigation.

#### 6. DATE OF SALE

The date of sale is an important issue in every antidumping investigation. The Commerce Department requires that the foreign producer or exporter report all U.S. and home market (or third country, if appropriate) transactions that have a date of sale falling within the period of investigation or review. Thus, the date of sale determines the universe of transactions that will be examined by the Commerce Department for purposes of determining the margin of dumping. Once the universe of sales is determined, that universe will determine whether there is a sufficient volume of home market sales to use as the basis for the calculation of foreign market value. If there is an insufficient number of home market sales, the foreign producer or exporter is required to report all sales to the largest third country market. The date of sale also determines the transactions and products for which detailed expense data and cost information must be reported. Finally, the date of sale determines the exchange rate to use for purposes of currency conversions.

Neither the current U.S. statute nor the regulations contains a definition of "date of sale." In practice, the Commerce Department considers the date of sale to be the date when the material terms of the sale -- usually, price and quantity -- are agreed to by the parties.

In many cases, it is difficult to determine the precise point in time when the price and quantity are established. It is not possible for the respondent company to review the documentation on each and every transaction to determine when the price and quantity were agreed, particularly in light of the stringent deadlines for responding to the Commerce Department's questionnaire. Thus, companies are forced to select the best date of sale available in their records (typically in their computer records) to enable them to identify all sales in a given period and report all of the detailed expenses and costs associated with those sales by the deadline set by the Commerce Department.

U.S. law should be amended to include a workable definition of "date of sale." With the exception of sales made pursuant to long-term contracts, the date of sale should be the date of sale used by the entity subject to investigation or administrative review for its financial accounting purposes. The accounting date of sale is normally based on one of the following: the date of the sales contract, purchase order, order

confirmation, invoice, or shipment. In no case should the date of sale reported for purposes of the antidumping questionnaire response occur after the date of shipment. For sales made pursuant to long-term contracts, the date of sale should be the date on which the basic terms of the contract (i.e., price and quantity) are agreed by the parties.

Such a definition would be beneficial for two main reasons. First, the reporting of sales in accordance with the company's accounting records would reduce the administrative burden and better enable the Commerce Department to verify more thoroughly the completeness and accuracy of the foreign producers' and exporters' questionnaire responses. Second, a date of sale based on the company's accounting records would reduce the needless argumentation concerning the appropriate date of sale in the vast majority of cases and should reduce the unnecessary reliance on dumping margins based on punitive "best information available." The proposed date of sale definition would not have any discernible impact on overall levels of final dumping margins.

## 7. ORDINARY COURSE OF TRADE

The term "ordinary course of trade" is used throughout the Antidumping Agreement, but it is not defined. "Ordinary course of trade" is defined in current U.S. law as follows:

The term "ordinary course of trade" means the conditions and practices which, for a reasonable period of time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind. (19 U.S.C. § 1677 (15)).

This definition should remain intact in U.S. law, and any attempts to redefine ordinary course of trade to mean only profitable sales must be rejected. Article 2.2.1 of the Antidumping Agreement provides that sales below cost (plus SG&A) "may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time." (footnotes omitted). Article 2.2.1 of the Antidumping Agreement does not define the term "ordinary course of trade;" rather it sets out the circumstances under which sales may be treated as not being in the ordinary course of trade.

## B. PROCEDURAL ISSUES

### 1. HOME MARKET AND THIRD COUNTRY VIABILITY

During the Uruguay Round negotiations on antidumping, the Parties recognized the need to develop uniform rules for the determination of whether dumping is occurring, as well as how to measure the extent of the dumping. To that end, the Parties agreed to a test to determine whether sales in the home market are sufficient for the calculation of normal value. In the U.S., this test is commonly referred to as the "home market viability test." Under current regulations and practice, the Commerce Department applies a 5 percent test based on the ratio of home market sales to third country sales (excluding sales to the U.S.) for each such or similar category of merchandise. The new Agreement requires a change to U.S. practice and regulations, whereby the 5 percent test is to be based on the ratio of home market sales to U.S. sales.



The Antidumping Agreement does not express a preference for the use of third country sales over constructed value when the home market is not viable. § 353.48(b). However, the U.S. has traditionally considered real prices to be a better measure of foreign market value than constructed value. Therefore, the implementing legislation should express a preference for the use of third country prices when the home market is deemed non-viable and should contain a 5 percent test to determine third country viability.

## 2. INITIATION DETERMINATION

The Antidumping Agreement requires that a major portion of the domestic industry support the petition. Major portion is defined (based on a U.S. proposal) as at least 50 percent of the total production of the like product of producers expressing either support or opposition to the petition, but in no event less than 25 percent of the total production of the like product. This reflects concern about the harassment potential of antidumping petitions. An investigation disrupts trade patterns and can be extremely expensive to defend. Therefore, there is significant potential for the system to be abused for anti-competitive purposes. The antidumping statute is intended to provide relief to an industry harmed by unfairly traded imports, not to provide relief to individual members of an industry if those individual members may be experiencing difficulty from competition.

There have been several international disputes over what constitutes a "major portion." Numerous countries have required increasingly low levels of domestic support in order to initiate an investigation. For example, the European Union, Canada, and Mexico apparently only require approximately 25 percent support by the domestic industry. The Antidumping Agreement attempts to correct such limited requirements while recognizing that in an extremely fragmented industry, it may be difficult for members of that industry to garner sufficient active participation in the petition process. Therefore, in order to eliminate disputes over what constitutes a major portion, that concept has been defined. In the most fragmented industries, statistically valid sampling techniques may be used to determine whether there is more expressed support than opposition, but at a minimum the producers accounting for at least 25 percent of the domestic production must support the petition before an investigation can be initiated.

Moreover, if, after an investigation has been initiated, it is found that the requisite support does not exist, the Agreement requires that the investigation be immediately terminated. The issue of industry support, or standing, is a jurisdictional issue which may be raised at any time. In raising the issue of industry support after the initiation of an antidumping duty investigation, the interested party raising the issue must provide reason to believe or suspect that the requisite industry support does not exist. Reason to believe or suspect may be submitted by any interested party and may include, but is not limited to, statements of opposition by members of the domestic industry, information that members of the industry which previously supported the investigation (or order) are no longer members of the industry, or the introduction of new producers that have not previously informed the Commission or the administering authority whether they support or oppose the investigation (order). If reason to believe or suspect is provided, the administering authority must conduct an investigation of the level of support for the antidumping duty investigation or the antidumping duty order, as appropriate. If the administering authority determines that the requisite support does not exist, the administering authority shall immediately terminate the antidumping duty investigation, or revoke the antidumping duty order, as appropriate.

Finally, in an attempt to eliminate petitions filed for harassment purposes, the Agreement requires that the investigating authorities conduct sufficient inquiries prior to initiation to assure themselves that the requisite levels of support for an investigation exist.

The legislation should bring U.S. law into conformity with these requirements. In order to assure that as accurate a determination concerning support for the petition (standing) as possible is made, the legislation should recognize the need for the administering authority to conduct a separate investigation of standing prior to determining whether to initiate an antidumping investigation. Such an investigation shall be conducted in such manner as to allow all interested parties the opportunity to participate, while proceeding expeditiously so as to not unduly delay the determination whether to initiate an antidumping duty investigation.

Because some additional prior investigation will be required, the administering authority has to be provided more time to determine whether to initiate an investigation on the basis of a petition filed. The authorities may consult with interested parties during that time, and, if requested, shall consult with petitioners and the government of the exporting country, during that time. Moreover, it is anticipated that in order to determine whether there is the requisite support among the domestic industry, the Commission will continue its current practice of polling the domestic industry for their position on the investigation. If the Commission or the administering authority, on the basis of substantial evidence, determines that the domestic industry is a fragmented industry, involving an exceptionally large number of producers, the Commission may determine support and opposition by using statistically valid sampling techniques. However, the Commission must provide the administering authority with the results of that polling prior to the administering authority's determination whether or not to initiate an investigation.

In determining the proportion of support to opposition, if the management of a firm within the domestic industry takes one position and the union or association of employees representing the employees of that firm take the opposite position, it should be considered that that firm neither supports nor opposes the petition, but, instead, takes no position. Footnote 14 of the Antidumping Agreement defines management in this situation as "producers." At the same time, the Agreement permits employees representing the same production to express an opinion on the petition. Thus, if management and the employees representing the same production express opposing views, the Agreement does not permit those views to be considered.

In addition, the legislation should provide for a rebuttable presumption that the support for, or opposition to, a petition expressed by producers related to exporters or importers of the subject merchandise, or which are themselves importers or purchasers of the same type of merchandise from foreign countries, shall be disregarded.

### 3. PUBLICIZING PETITIONS

Because countries were concerned about the use of antidumping petitions for harassment purposes and because the mere filing of such petitions can disrupt normal trade patterns, the Antidumping Agreement includes a provision to prevent the publicizing of a petition prior to the initiation of an investigation. There is, however, a counteracting concern that interested parties be given a full opportunity to prepare for an investigation. The current U.S. practice treats petitions as public documents, thus allowing interested parties access to petitions, prior to the administering authorities' determination to investigate. The U.S. government does not issue press

releases about the filing of such petitions. Therefore, U.S. practice is fully consistent with the Antidumping Agreement. The United States should not change the practice of the administering authority concerning the treatment of petitions prior to the initiation of an investigation, since its current practice balances these two competing interests.

#### 4. ADEQUATE TIME TO SUBMIT QUESTIONNAIRE RESPONSES

Article 6.1.1 of the Antidumping Agreement sets forth a minimum period of 30 days which authorities are required to provide to foreign producers and exporters to submit a response to an antidumping questionnaire. The provision also provides a week for transmission of the questionnaire to the exporter or foreign producer.

While the current statute does not contain minimum time periods for the submission of questionnaire responses during an investigation or in an administrative review, current Commerce practice allows 30 days after transmission of the initial questionnaire during investigations and Commerce regulations provide 60 days for the submission of initial questionnaire responses during an administrative review, 19 C.F.R. § 353.31(b)(4). By requiring a similar procedural safeguard in investigations and administrative reviews, Article 6.1.1 ensures consistency and provides notice to parties who face the task of responding to a questionnaire of the time constraints accompanying such a response, thereby increasing the likelihood that parties will be prepared to allocate the time appropriately and thus furnish a complete and accurate response to the questionnaire. The law should thus be amended incorporating minimum time frames for questionnaire responses in investigations and administrative reviews.

Article 6.1.1 also provides that requests for extensions be considered and granted where practicable and where cause is shown. The current statute is silent with respect to extension requests. Commerce regulations provide authority to certain employees to approve extensions but state that "[o]rdinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information." 19 C.F.R. § 353.31(b)(3). The law should accordingly be amended to be consistent with the standard articulated in Article 6.1.1 of the Agreement.

#### 5. DISTRIBUTION OF PETITION TO ALL KNOWN EXPORTERS

The current statute does not provide a process whereby exporters are supplied with a full copy of the petition, although it is current Commerce practice to provide a public version of the petition to the embassies of the countries named in the petition. Article 6.1.3 ensures that all parties potentially affected by an antidumping investigation be notified immediately of the initiation of the investigation and the contents of the petition in order that they be afforded an opportunity to cooperate fully with the authorities' investigation. The law should thus be amended consistent with Article 6.1.3.

#### 6. WHEN ORAL INFORMATION IS TO BE CONSIDERED

Article 6.3 reflects a goal that antidumping investigations and reviews be transparent in all respects, including with regard to the treatment of oral information. This provision ensures that any oral information considered by the authorities in their investigation is fully documented and disclosed to interested parties. Interested parties are thereby fully aware of the information taken into account in any decision by the investigating authorities and are able to address that information in their respective presentations before the investigating authorities. This provision is particularly important in view of problems that U.S. exporters have



encountered in defending themselves against antidumping allegations in other countries where access to information has been less complete than in the United States.

There is currently no provision in the statute which requires full disclosure of all information provided orally and relied upon. The law should thus be amended to ensure that all information provided orally is transcribed and made available to interested parties in a timely fashion. It is understood that the Department of Commerce and the International Trade Commission will continue to include in the public file a summary of any factual matter supplied at an ex-parte meeting.

## 7. TIMELY OPPORTUNITY TO REVIEW INFORMATION

Article 6.4 requires that the investigating authority make available all relevant information used in the investigation quickly, thereby avoiding the risk that a party will be unable to comment on information later relied upon by the investigating authority. By receiving information quickly, parties in antidumping cases will be able to provide the authorities with their views or perspective on that information, thereby providing guidance on how that information is to be considered or weighed. Without this safeguard, the authorities run the risk of basing their determination on insufficient facts or even potentially of basing their decision on misinformation.

The requirement that relevant public or proprietary information be made available in a timely fashion is not contained in current law. The law should therefore be amended consistent with Article 6.4 to ensure that interested parties are provided with timely opportunities to receive public information and, where appropriate, receive proprietary information in a timely manner. As the administering authority and the Commission are presumed to have considered all of the information in the administrative record, the GATT language ". . . [information] that is used by the authorities in an antidumping investigation . . ." need not be included in the legislative provision.

## C. ISSUES RELATING TO THE DETERMINATION OF DUMPING

### 1. FAIR COMPARISON - ADJUSTMENTS

In the 1979 Antidumping Code, a "fair comparison" was provided for, but what was meant by that phrase or what was required to achieve a fair comparison was not fully explained. In the absence of a clear rule, many countries employed comparisons that skewed results in favor of their domestic industry. Therefore, the GATT 1994 Antidumping Agreement indicates that the need to make a fair comparison is of paramount importance.

The purpose of this section is to clarify U.S. law and ensure its conformity with U.S. international obligations. A fair comparison has long been a goal of the U.S. antidumping practice. The Court of Appeals for the Federal Circuit has stated:

One of the goals of the statute is to guarantee that the administering authority makes the fair value comparison on a fair basis - comparing apples with apples.

Smith-Corona Group v. United States, 713 F.2d 1568, 1578 (CAFC 1983).

Nevertheless, because of discrepancies in the wording of the statute and agency interpretations, in many cases apples are not compared with apples. In the past, some courts have overruled efforts by the Commerce Department to make a fair comparison. (See, e.g., The Ad Hoc Committee of AZ-NM-TX-FL

Producers of Gray Portland Cement v. United States, No. 93-1239 (C.A.F.C. Jan. 5, 1994) (permitting adjustment for pre-sale freight for U.S. sales but not home market sales.) The implementing legislation should ensure that U.S. law and practice comply with the GATT requirements that a fair comparison be made.

The legislation should reflect the paramount importance of the requirement that a fair comparison be achieved. It should then define the types of adjustments to be made, recognizing that if one type of expense is deducted from one side of the equation, expenses of the same type must be deducted from the other side of the equation as well. To deduct an expense from one side of the equation without deducting in full (not subject to any capping) the equivalent expense on the other side cannot achieve a fair comparison. It would be like comparing apples with cider. The administering authority recognizes the unfairness of one-sided deductions in certain circumstances. In Tapered Roller Bearings Four Inches or Less in Diameter From Japan, 55 Fed. Reg. 22,369, 22,371 (Dep't Comm. 1990), it noted: "a deduction from United States price for profit without a corresponding adjustment to foreign market value would lead to unfair comparisons of prices."

Moreover, to ensure that equivalent adjustments are made on both sides of the equation, it is necessary that the administering authority require the same showing of proof and apply the same assumptions in determining the appropriate adjustments. In all events, the administering authority must apply the law in such a way as to achieve a fair comparison (*i.e.*, compare apples with apples).

## 2. FAIR COMPARISON - AVERAGING

In seeking to ensure that a fair comparison is made between the export price and the normal value, the Antidumping Agreement directs the administering authority, absent three specified exceptional circumstances, to establish the margin of dumping based on either a weighted average-to-weighted average comparison or a transaction-to-transaction comparison. While the Agreement does not express a preference for one method over the other, the implementing legislation should express a clear preference for the use of a weighted average-to-weighted average method for each "product match" for two reasons. First, the weighted average-to-weighted average method is preferable from the perspective of administrative convenience and efficiency. Second, the weighted average-to-weighted average method is less likely to yield statistically unrepresentative results than the transaction-to-transaction approach. The implementing legislation should provide that when foreign market value is based on constructed value, the administering authority will use a weighted average U.S. price, since constructed value is a weighted average of costs for the period of investigation.

While Article 2.4.2 of the Agreement permits price comparisons to be made on either a weighted average-to-weighted average or transaction-to-transaction basis, Article 3.1 of the Agreement requires that the injury determination be based upon the volume of dumped imports. The Court of International Trade has recognized that the GATT requires that injury be based on the effects of the dumped imports only. Algoma Steel Corp. Inc. v. United States, 688 F. Supp. 639, 644-45 (Ct. Int'l Trade 1988). Thus, if the administering authority chooses to use a transaction-to-transaction method (or, in exceptional circumstances, a transaction-to-weighted average method) to compare export prices to foreign market value, then consistent with the dictate of Article 3.1, the volume of dumped imports considered in making the injury determination should be comprised of only those transactions specifically found to be sold at dumped prices. By comparison, when using a single weighted average-to-weighted average price comparison, the injury determination should be based upon the volume of imports falling within the class or kind of merchandise found to be dumped.

Consistent with the Agreement, the legislation should set forth the specific conditions under which a comparison of individual U.S. sales may be compared to a weighted average foreign market value. That is, the administering authority must find a pattern of export prices which differ significantly among different purchasers, regions or time periods. The legislation should implement the Code requirement that the burden lies with the administering authority to determine when the conditions exist to justify invoking the exception to the weighted average-to-weighted average (or transaction-to-transaction) method, and to provide an explanation as to why price differences among purchasers, regions or time periods would not be accounted for by using the weighted average-to-weighted average (or transaction-to-transaction) method. These three exceptions should be construed narrowly in view of the tendency of this type of comparison to distort the dumping margin calculation. As the U.S. General Accounting Office noted in a 1979 report on the administration of the antidumping law, "[t]his method of determining margins between home and export market sales tends to enlarge existing margins or to create margins where none existed."¹

Consistent with the "fair comparison" requirement repeated in Article 2.4.2, the implementing legislation should provide that the authority shall examine whether a similar pattern of pricing exists in the home market (or third country market, if appropriate). If a similar pattern of prices exists in both markets, the administering authority may not invoke the exception and compare an individual sale to a weighted average foreign market value.

### 3. SALES BELOW COST

The Antidumping Agreement adopts the U.S. statutory language for disregarding sales at prices below unit costs in the calculation of normal value. The Senate Finance Committee Report on the Trade Act of 1974 explained that this provision is directed at injury caused by "sales uniformly made at less than cost of production." S. Rep. No. 1298, 93rd Cong., 2d Sess. 173 (1974). While "systematic" selling at prices below cost is to be actionable, U.S. law, and now the GATT, also acknowledge that below-cost sales may frequently be expected to occur under normal business conditions, and therefore provide that such sales may be disregarded only if they are made (1) within an extended period of time, (2) in substantial quantities, and (3) at prices which do not permit cost recovery within a reasonable period of time. The Senate Finance Committee explained,

[t]hese standards would not require the disregarding of below-cost sales in every instance, for under normal business practice in both foreign countries and the United States, it is frequently necessary to sell obsolete or end-of-model year merchandise at less than cost. Similarly, certain products, such as commercial aircraft, typically require large research and development costs which could not reasonably be recovered in the first year or two of sales. Thus, infrequent sales at less than cost, or sales at prices which will permit recovery of all costs based upon anticipated sales volume over a reasonable period of time would not be disregarded.

Id.

The GATT Antidumping Agreement clarifies and elaborates upon the standards for disregarding below-cost sales. For example, the Agreement states, "the extended period of time

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¹ U.S. General Accounting Office, Report to the Congress by the Comptroller General of the United States, U.S. Administration of the Antidumping Act of 1921, 15 March 1979.



should normally be one year but shall in no case be less than six months." Antidumping Agreement Article 2.2.1, fn 4. Consequently, the implementing legislation should provide that, normally, substantial quantities of below cost sales must occur in a majority of months within the period under consideration (i.e., more than six out of twelve months, or three out of six months).²

While these standards for determining whether sales below cost have occurred within an extended period of time should normally apply, the Department should have the discretion to reduce the number of months constituting "an extended period" under the exceptional circumstance when below-cost sales concentrated in only a few months produce an overall loss during the period under examination. The new Agreement provides for this test under its examination of whether sales have been made in substantial quantities.

The new Agreement sets forth a dual test for determining whether below-cost sales have been made in substantial quantities. The administering authority must either establish that the weighted average selling price of the transactions under consideration for the determination of foreign market value is below the weighted average unit cost, or that the volume of sales below per unit costs represents at least 20 percent of the volume sold. Antidumping Agreement Article 2.2.1, fn. 5.

Current U.S. law provides that, when below-cost sales occur in such substantial quantities that the remaining above-cost sales are "determined to be inadequate as a basis for the determination of foreign market value under section [773](a)," foreign market value shall be based on constructed value. 19 U.S.C. § 1677b(b). The Department has interpreted this to mean that constructed value should be used for the calculation of foreign market value if more than 90 percent of home market or third country sales are below cost. However, as has been noted by the Court of International Trade, the statute's reference to section 773(a) indicates that the test of adequacy is the same for the two sections. *Timken Company v. United States*, 673 F. Supp. 495, 517 (Ct. Int'l Trade 1987). Footnote 2 to Article 2.2 of the Antidumping Agreement modifies the adequacy test that has been applied by Commerce under Section 773(a). The new test provides that sales considered for the determination of foreign market value should normally constitute at least 5 percent of sales to the United States. The implementing legislation should incorporate this test in both Section 773(a) and Section 773(b).

A discussion of the requirement that below-cost sales be at prices not permitting cost recovery before they may be

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² Arguments have been raised that the Antidumping Agreement's use of the phrase "within an extended period" rather than the U.S. statutory language "over an extended period" removes the test of whether below-cost sales are sporadic in nature. Under this interpretation, the Antidumping Agreement would be read to require that below cost sales occur at any point within the period of investigation or review. However, rules of statutory construction prohibit such a reading, since the phrase "extended period of time," and its definition in footnote 4, would be rendered completely superfluous. The extended period could be a month or a millennium, yet the occurrence of below-cost sales on a single day would be sufficient to disregard sales, under this reading. The legislative history of the 1974 Act makes clear that below-cost sales must be "systematic" to be disregarded. The Antidumping Agreement provision, like the current U.S. statutory provision, can only be read to require that for below-cost sales to be disregarded, they must be more than sporadic (i.e., they must occur in substantial quantities throughout the period under consideration).

disregarded is included below in the discussion of start-up costs.

#### 4. CALCULATION OF COSTS

Subsections (b) and (e) of section 773 of the Tariff Act of 1930 currently provide for the determination of whether sales under consideration for the calculation of foreign market value have been made at prices below the cost of production, and for the calculation of a constructed value to be used as foreign market value under specified circumstances. The GATT Antidumping Agreement adopts the U.S. practice³ of relying on the exporter's or producer's own records in calculating cost of production or constructed value, so long as those records are kept in accordance with the generally accepted accounting principles of the exporting country.

Among other costs, this applies to the treatment of certain costs as extraordinary expenses not relating to production or sale of the merchandise under consideration. Examples of these include costs attributable to floods and other natural disasters, civil unrest, strikes and restructuring costs. As required by the Antidumping Agreement, the administering authority should accept a company's characterization of such costs on its records as extraordinary so long as the company's records are in accordance with GAAP in the exporting country and the costs reasonably reflect costs associated with production and sale of the product under consideration. On the other hand, certain recurring costs treated as extraordinary under the GAAP of some foreign countries could relate to production of subject merchandise. A Commerce Department policy paper explains that the distinction between recurring and non-recurring extraordinary costs as follows:

##### a) Recurring extraordinary costs

These are costs which are not normal in the ordinary course of business but are not totally unanticipated. The primary example are costs incurred by a strike. If a strike often occurs each time a contract is renegotiated, the costs should not be totally absorbed in the period incurred. They should be acknowledged as extraordinary and therefore amortized over an appropriate period. In the case of a strike, the appropriate period would be the life of the labor contract. Other examples of this type of cost are closing due to exceptionally bad weather or start-up costs for new machinery.

##### b) Non-recurring extraordinary costs

If the costs incurred are unanticipated and not expected to recur, they should not be included in our calculations. Often severe damage due to tornado, flood, civil unrest, etc. would be treated in this manner. When part of the cost is reimbursed by an insurance payment, the insurance payment should not be incorporated into income for purposes of calculating profit for C.V. purposes.

Policy Paper # B, Office of Policy, Import Administration, U.S. Department of Commerce.

The implementing legislation should provide that, to the extent the Commerce Department determines that costs treated as extraordinary or non-recurring costs on the producer's records relate to production and sale of the subject merchandise and are actually recurring in nature, Commerce must amortize such costs

³ This practice is based on language from the Report of the House Ways and Means Committee that accompanied the Trade Reform Act. See H.R. Rep. No. 571, 93rd Cong., 1st Sess. 71 (1973).

over an appropriate period of years. Moreover, the legislation should provide that Commerce must not include in cost of production or constructed value non-recurring extraordinary costs, for example, costs arising from natural disasters or civil unrest.

#### 5. START-UP COSTS AND COST RECOVERY

In allowing for a reasonable period of time for recovery of costs on below-cost sales, U.S. law and the GATT Antidumping Agreement acknowledge that below-cost sales may represent a normal and justifiable business practice in a given industry even when such sales occur within an extended period of time and in substantial quantities. This provision is of particular importance to small U.S. start-up companies, which are responsible for creating a large percentage of new jobs in the United States. Export markets are of crucial importance to small businesses operating in the global economy. These companies are especially vulnerable under foreign antidumping laws to findings of dumping based on sales below cost. The new Antidumping Agreement provides for a more commercially realistic approach to determining whether below-cost sales justify the imposition of antidumping duties.

In addition to small businesses, other critical industries in the U.S. experience start-up situations which currently leave them vulnerable to foreign antidumping duties based on findings of below-cost sales. The Senate Finance Committee Report on the Trade Act of 1974 cited the example of the commercial aircraft industry, which incurs large research and development costs which are not immediately recovered by sales of a new product. S. Rep. No. 1298 at 173. Based on interviews with U.S. industry officials, the U.S. International Trade Commission offered the following description of pricing practices in the commercial aircraft industry: "Because the cost of the first several aircraft in a production series is higher than later ones because of production inefficiencies, the price is initially based on the estimated cost of producing a specific number of airplanes over an estimated number of future airplanes." United States International Trade Commission, Pub. No. 2430, Industry & Trade Summary, Aircraft, Spacecraft, and Related Equipment 5-6 (1991). Another example of a company in a "start-up" situation is Nucor's new mini-mill, which required more than a year to achieve full operational status.

In addition to start-up situations, below-cost sales may normally occur within an extended period and in substantial quantities during troughs in the business cycle or as a result of costs incurred for the benefit of future and/or current production, such as costs for refurbishing or replacing major equipment, or research and development costs incurred for a new product. During such periods, extremely high production costs or low capacity utilization may occur, resulting in high unit costs. Companies typically do not raise prices to cover all costs at such times because of depressed or limited demand and the expectation that sales volume and capacity utilization will increase, allowing for the recovery of all costs. As noted in the Senate Finance Committee Report, companies in these situations typically determine prices based on "anticipated sales volume over a reasonable period of time." *Id.*

Recovery of Costs Within a Reasonable Period. The Antidumping Agreement establishes that prices which are below cost at the time of sale shall be considered to provide for recovery of costs within a reasonable period of time if they are above weighted average costs for the period under examination. Beyond this "safe harbor," the GATT Agreement provides guidance as to the proper methodologies for addressing the extremely high costs and/or low production and sales volumes typical of companies in start-up and reinvestment situations. These methodologies are discussed in greater detail below. U.S. court



decisions provide additional guidance as to the factors to be considered in determining whether cost recovery within a reasonable period is possible.

For example, a frequently cited decision by the Court of International Trade has noted that there should be a consideration of factors including "how far below cost the sales are; how much, if at all, costs of production are expected to decline; and the period of time over which they are expected to decline." Timken Co. v. United States, 673 F. Supp. 495, 516 (Ct. Int'l Trade 1987). Other courts have noted the relevance of capacity utilization and anticipated future sales, since an increase in capacity utilization results in a decrease in unit costs of production. E.g., Toho Titanium Co. v. United States, 693 F. Supp. 1191, 1194 (Ct. Int'l Trade 1988); Daewoo Electronics Co., Ltd. v. United States, 712 F. Supp. 931, 940-943 (Ct. Int'l Trade 1989). The implementing legislation should incorporate these considerations and others raised by the courts.

Start-Up Operations and Non-Recurring Costs Benefitting Future Production. As noted above, the GATT Antidumping Agreement provides general guidance as to the proper methodology for addressing the extremely high costs and/or low production and sales volumes typical of companies in start-up and reinvestment situations. Article 2.2.1.1. states that costs, in particular capital expenditure and development costs, should be allocated based on the methodologies used by the producer or exporter in its records. To the extent a company's own allocation methodologies do not already do so, costs must be "adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations." Footnote 6 of Article 2.2.1.1 clarifies that "the adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities."

While high production or development costs may be adjusted through amortization, an adjustment is also necessary to account for effects on unit costs because of low production volumes and capacity utilization which may accompany start-up operations or other events relating to future production, including equipment installation or repair. For industries and products incurring costs relating to future production, this adjustment may reflect the historical capacity utilization rates or production levels over an appropriate number of years for the product and industry under consideration, or over the useful life of the equipment or machinery giving rise to the effects on unit costs.

With respect to start-up operations, the GATT Antidumping Agreement requires that costs be adjusted to reflect those at the conclusion of the start-up period, or, if the start-up period extends beyond the period under examination, the most recent costs that may reasonably be taken into account. The length of the start-up period should be consistent with normal practices in the specific industry under consideration, but should not be considered to end until there has been six months of production of commercial volumes. This is necessary to account for "hiccups" in production which can be expected to occur even after commercial production volumes have been initially achieved. An example of such "hiccups" would be slow-downs or halts in the production of a new steel mill to modify or fine-tune various aspects of design or production. The start-up period should be considered to end only after such production slow-downs or halts have ended or are no longer attributable to the start-up situation. In determining whether commercial volumes have been achieved, the administering authority should ascertain the normal capacity utilization and output volume for the industry under investigation.

## 6. PROFIT AND GENERAL EXPENSES

Under current U.S. law, a minimum of 8 percent for profit and 10 percent for general and administrative expenses is added to production costs to calculate "constructed value." Article 2.2.2 of the Antidumping Agreement precludes reliance on these arbitrary figures and thus requires a change to U.S. law. The implementing legislation should reflect the language in the new Agreement which provides that, wherever possible, profit and general expenses are to be based on the actual profit and general expenses incurred on the same class or kind of merchandise by the producer or exporter subject to the investigation or administrative review. If profit and general expenses cannot be determined in this manner, the authorities should then base this information on: (1) the actual profit and general expenses of the exporter or producer under investigation or review based on production and sales in the domestic market of the same general category of merchandise or, if that is not available, (2) the weighted-average profit and general expenses of other producers or exporters under consideration based on production and sales in the domestic market of the same class or kind of merchandise. If profit and general expenses cannot be determined based on the above-listed options, the administering authority should rely on any other reasonable method provided that "the amount of profit and general expenses so established shall not exceed the profit normally realized and the amount of general expenses normally incurred by other exporters or producers on sales of products of the same general category in the domestic market of the exporting country." GATT Antidumping Agreement, Art. 2.2.2.

## 7. FURTHER MANUFACTURING IN THE UNITED STATES

Under current U.S. law and practice, the United States price of subject merchandise is based on the sales price to the first customer who is unrelated to the foreign producer or exporter. When a foreign producer maintains a manufacturing or assembly operation in the United States, the first unrelated customer is often the customer of the related manufacturer in the United States. In that case, the administering authority is arguably required, pursuant to Section 772(e)(3) of the Tariff Act of 1930, to deduct from the price to the unrelated customer the value added in the United States after importation and prior to sale. This often entails a complex calculation of U.S. manufacturing costs which imposes a significant burden on the parties and the Department of Commerce, and often results in absurd calculations.

The legislative history accompanying Section 772(e)(3) explains that the Department need not calculate a value-added deduction in every case: "The Committee does not intend this provision to apply, however, unless the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of imported product . . . ." S. Rep. No. 1298, 93rd Cong., 2d. Sess. 173 (1974). Lacking more detailed Congressional guidance, the Department of Commerce has interpreted "a significant amount" to mean one percent of the total value of the product sold in the United States. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, 57 Fed. Reg. 28,360, 28,377 (Dep't Comm. 1992).

The burden and imprecision of calculating further manufacturing costs (e.g., subtracting all costs from a motorcycle made in the U.S. to place a residual "value" on an imported chain) often outweighs any advantage that may result from the theoretically "correct" calculation of antidumping duties or deposits applicable to the chain. Current law should be revised to provide clear guidelines as to the conditions under which the Department should undertake this exercise. The implementing legislation should specify that the Department should not calculate value-added costs when imported merchandise

subject to further manufacturing constitutes less than 15 percent of the exporter's total U.S. sales volume on a class or kind basis, or when the value of imported merchandise comprises less than 15 percent of the total sales price of the finished product sold in the United States on a class or kind basis. In deciding whether to calculate further manufacturing costs when these conditions do not apply, the Department should consider factors such as the administrative burden, the burden on the parties, whether the complexity of the further manufacturing calculation would render an accurate calculation more likely, whether the records of the U.S. further manufacturing facilities would render an accurate calculation more likely and other relevant considerations. The legislation should also provide that, with respect to any merchandise for which a margin has not been calculated under this provision, antidumping duties should be assessed at the weighted-average margin rate for all other sales.

Simple modifications of merchandise in the United States which have little effect on its value and which do not rise to the level of a manufacturing operation should not trigger the need to perform a value added calculation pursuant to current section 772(e)(3). Examples of such minor modifications would include replacing the tread of a bulldozer or performing simple modifications of products using kits. In these cases, it should be sufficient for the Commerce Department to adjust U.S. price for any change in value to the merchandise based on the difference in cost between any parts removed and added.

#### **8. EXCHANGE RATES AND CURRENCY CONVERSIONS**

The new GATT Antidumping Agreement contains a provision that establishes uniform rules on the appropriate exchange rate to use when converting currencies. During the negotiations, the Parties acknowledged that many companies "hedge" against shifts in exchange rates and agreed that this standard business practice should be addressed in the Agreement. Thus, the Agreement provides that when a sale or purchase of foreign currency on a forward market (i.e., hedging) is linked to an export sale, the administering authority must use the exchange rate in the forward sale when converting the currency. While the linkage must be direct (i.e., the hedging must include a specific sale or group of sales), it need not be tied through documentation to the specific sales contract, provided that it can be demonstrated that the subject merchandise is included in a broader group subject to the hedging operation.

The Agreement also requires that exchange rate fluctuations be ignored in the calculation of dumping margins, thereby safeguarding against the finding of dumping margins (or a portion of the margin) as a result of fluctuations which are beyond the control of the foreign producer or exporter. Many companies sell pursuant to price lists or set prices based on external price indicators such as commodity markets. From a commercial perspective, it is not possible for exporters to adjust their prices immediately in response to rapid and/or dramatic fluctuations in exchange rates.

With respect to sustained changes in exchange rates, the Antidumping Agreement allows exporters at least 60 days to adjust their prices in response to such sustained changes. This reflects an understanding of general commercial reality, namely that companies do not normally adjust their prices in response to changes in the exchange rate until a currency trend is well-established. Current Commerce Department regulations permit exporters "a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates." 19 C.F.R. § 353.60(b) (1993). In practice, however, the Commerce Department has never relied on this provision.



One of the main problems with current Commerce Department practice with respect to sustained changes in exchange rates is that, in determining whether a sustained change in exchange rates has occurred (and whether the exporter should have adjusted its prices accordingly), the Commerce Department has the benefit of hindsight. That is, the Commerce Department examines the exchange rate movements over the six-month period of investigation and is able to determine, with the benefit of hindsight, that the change was sustained and that the exporter should have adjusted its prices. See e.g., Coated Groundwood Paper from Belgium, 56 Fed. Reg. 56,359, 56,361 (Dep't Comm. 1991). At the time the exporter sets its prices, however, it does not have the benefit of hindsight and is not then able to determine whether the movement in the exchange rate is a fluctuation or a sustained change. Just as we cannot determine whether we are experiencing a few days of unseasonably warm weather or we are in the middle of a warming trend, an exporter cannot know whether movements in the exchange rate are reflective of temporary fluctuations in the exchange rate or such movements are indicative of a sustained change in the exchange rates. It is only with the benefit of hindsight that such a judgment can be made.

The implementing legislation should provide exporters a reasonable period of time -- 90 days -- to determine whether exchange rate movements are normal, temporary fluctuations or sustained changes. Exporters must then be allowed at least 60 days from the end of the 90-day "sustained change" period in which to adjust their export prices. The appropriate exchange rate to be used by the administering authority when a sustained change in exchange rates occurs is the quarterly exchange rate in effect during the quarter prior to the 90-day sustained change period. The administering authority should have the flexibility to waive the 90-day period for establishing a sustained change for countries with a fixed exchange rate.

## 9. TERMINATION OF PRICE UNDERTAKINGS

Current U.S. law provides that upon a request made within 20 days after the publication of a notice of suspension of an investigation, "the administering authority and the Commission shall continue the investigation." Tariff Act of 1930, § 734(g). This provision sets no deadline by which the administering authority and the Commission must recommence an investigation.

The speedy conclusion of antidumping investigations is in the interest of all parties. As the Committee on Finance noted in implementing the current deadlines for antidumping investigations, "the committee believes long investigations serve no purpose." S. Rep. No. 249, 96th Cong., 1st Sess. 67 (1979). Therefore, the statute should be amended to require the continuation of the investigation within 3 business days of the receipt of a request filed pursuant to § 734(g).

## 10. DUTY AS A COST

### Introduction

Article 9.3.3 of the Uruguay Round Antidumping Agreement, which permits (but does not require) the treatment of antidumping duties as costs, is not based on a U.S. proposal. In fact, Article 9.3.3 is designed to limit this margin-inflating practice, to which the U.S. Government has formally objected in the past. See Letter from Alan F. Holmer, General Counsel, Office of the U.S. Trade Representative to Hans Beseler, Director, Trade Policy Instruments, Commission of the European Communities (March 31, 1986); Letter from Carlos Moore, American Textile Manufacturers Institute, Inc., to Alan Holmer, General Counsel, Office of the U.S. Trade Representative (February 7, 1986).

Article 9.3.3 must be read in the context of Article 9.3, which states that antidumping duties shall not exceed the margin of dumping, and Article 9.1, which encourages countries to assess less than the margin of dumping if that would remove injury. When antidumping duties or duty deposits are treated as costs, the antidumping duties assessed always exceed the margin of dumping. Moreover, they make antidumping duties penal in nature, rather than remedial, in contravention of the traditional U.S. position. See, e.g., Chaparral Steel Company v. United States, 901 F.2d 1097, 1003 (1990).

The U.S. position on duty as a cost should continue to be one of strenuous opposition. The U.S. Government should use Article 9.3.3 to circumscribe the E.U. practice to the maximum extent possible. In particular, the U.S. implementing legislation should be crafted so that USTR can argue to other countries, such as the E.U., that they should not treat antidumping duties as costs for purposes of calculating those duties. At most, Article 9.3.3 can be read to authorize treating antidumping duties paid as costs when an exporter fails to make efforts to reduce its dumping margin.

Several proposals have been put forward to bring this arbitrary, trade-distortive practice to the U.S. These proposals would require companies to raise their prices in the U.S. market by more than the amount necessary to reduce or eliminate dumping. They are directly analogous to requiring businesses to forfeit all of their quarterly estimated tax payments -- and to repay their full tax liability -- if their estimated tax payments are less than their final tax bill (calculated retrospectively) by even one cent. For the reasons described below, the U.S. Government should reject these proposals.

### Discussion

In order to understand the duty as a cost proposals, it is first necessary to understand the current Department of Commerce methodology for collecting estimated antidumping duty deposits and assessing actual antidumping duties. During an antidumping duty investigation, the Department requires that importers deposit estimated antidumping duties on entries of subject merchandise taking place after the preliminary determination. These deposits are only estimates of the dumping margins on these entries. The Department calculates the actual dumping margin on these entries by means of administrative review of these entries.

A review generally is conducted each year that an antidumping duty order is in place, and covers all entries made in the previous year. If the actual dumping margins calculated in a review are greater than the estimated antidumping duty deposits, the importer is required to pay the difference. Likewise, if the actual antidumping duties are less than the deposited amounts, the importer is entitled to a refund.

It is important to emphasize that the antidumping duty deposit serves only as an estimate of the actual antidumping duties that may be due. It is analogous to an estimated tax payment. The actual antidumping duty is calculated after a year of entries (and deposits) have been made (hence, the description of the U.S. system as "retrospective"), just as the amount of income tax due is calculated after the completion of the tax year and any estimated tax payments which may have been made during that year.

The following is an example of how the system has operated. If a petition is filed on December 31, 1991, the Department would examine U.S. and foreign market sales for the period July through December 1991. If the Department preliminarily determines in July of 1992 that the US price was \$90.00 and that the foreign market value ("FMV") was \$100.00, the

antidumping margin is \$10.00. This antidumping margin becomes the antidumping duty deposit rate (the estimated amount of duties payable) for any entries made after the date of the determination. No actual duties are assessed on entries prior to the preliminary determination, including those used to calculate the estimated dumping duties. If the Department then makes a final determination in October 1992 that the dumping margin is in fact \$10.00, and the ITC reaches a final determination of injury in December of 1992, an antidumping duty order is then issued.

If the antidumping duty order is issued on December 31, 1992, the first administrative review would be initiated in January of 1994. The review would cover entries from July of 1992 through December of 1993. If the exporter raised the U.S. price on these entries to \$100.00 while the FMV remained \$100.00, the actual dumping margin would be zero, and the entire deposit of estimated duties would be refunded to the importer. If the exporter only raised its U.S. price to \$95.00, the Department would calculate and assess an actual dumping margin of \$5.00. The importer would therefore receive a \$5.00 refund, the excess of the estimated duty deposit over the actual duties calculated for the entries.

The duty as a cost proposals would affect the calculation of U.S. price when the importer is related to the exporter.⁴ In that case, the U.S. price is calculated based on the "exporter's sales price" ("ESP"), which is calculated by deducting various movement and selling expenses from the price to the first unrelated customer in the U.S. For example, in the above calculation, the U.S. price of \$100 could have resulted if the price from the related importer to its unrelated customer had been \$110, and the expenses relating to the sales had been \$10.00. The U.S. price of \$95.00 could have resulted if the price from the related importer to its unrelated customer had been \$105, and the expenses relating to the sales had been \$10.00.

Under the duty as a cost proposals, the Department would deduct from the price to the unrelated customer not only the \$10.00 in expenses, but also the \$10.00 of estimated antidumping duties deposited by the importer with the U.S. Customs Service. The U.S. price would then become \$90.00, if the price to the unrelated customer had been \$110.00, or \$85.00, if the price to the unrelated customer had been \$105.00. The dumping duties payable would then become \$10.00 or \$15.00, rather than zero or \$5.00. The following chart illustrates these calculations. Duty is treated as a cost in cases 2 and 4.

I. Current System (1 and 3) Compared With Duty as Cost (2 and 4)

Case	FMV	Related Importer Expenses	Price to Unrelated Customer	USP	AD Deposit	AD Duties	Refund (or Extra Duties)
1	100	10	110	100	10	0	10
2	100	10	110	90	10	10	0
3	100	10	105	95	10	5	5
4	100	10	105	85	10	15	(5)

By deducting antidumping deposits as if they were a selling expense in the U.S. market instead of a credit against actual duties payable, the duty as a cost proposal creates

⁴ It should be noted that, to the extent that duty as a cost proposals read Article 9.3.3 to require that unrelated resellers must increase the price to their customers by the amount of the dumping margin, these proposals could run afoul of antitrust concerns regarding resale price maintenance.



dumping margins where none would otherwise exist (case 2), or increases dumping duties beyond the actual margin of dumping (case 4). The Department of Commerce has consistently rejected the treatment of antidumping duties as a cost on this basis, as well as on the basis of the fact that a potentially refundable deposit of estimated duties is not an actual cost to a company. The U.S. Court of International Trade has endorsed the Department's reasoning. For example, the Court of International Trade recently concluded that "the ITA was correct not to deduct cash deposits of estimated antidumping duties, which may not bear any relationship to the actual dumping duties owed, from USP." Federal-Mogul Corporation v. United States, Slip. Op. 93-221 at 8-12 (Ct. Int'l Trade November 30, 1993). The CIT has also noted in support of the Department of Commerce position, "[i]f deposits of estimated antidumping duties entered into the calculation of present dumping margins, then those deposits would work to open up a margin where none otherwise exists." PQ Corp. v. United States, 652 F. Supp. 724, 735-37 (Ct. Int'l Trade 1987).

Another way of viewing the duty as a cost rule is that it has the effect of requiring the related importer to forfeit the antidumping duty deposit, and then to pay the duties that are due based on the actual margin of dumping (without treating deposits as a cost). For example, in case 4 above, the \$15.00 which the importer must pay will equal the \$10.00 deposit, plus the \$5.00 in actual dumping duties payable if duties were not treated as a cost, as in case 3. Returning to the tax analogy, it would be as if the IRS required taxpayers to forfeit all estimated tax payments, and then to repay any taxes due.

Certain of the proposals to treat duty as a cost create an exception for the case where a company would have a dumping margin of zero if estimated duty deposits were not treated as a cost (case 2 above). This exception does not render this illogical system in any way logical. There is no justification for denying importers a credit for estimated payments against their actual antidumping duty liability, any more than there would be a justification for denying taxpayers a credit for estimated tax payments against their actual tax liability.

If the IRS were to permit taxpayers to credit their estimated tax payments against actual taxes due only if the estimated payments exceeded the actual amount due, it would still lead to the absurd result of taxpayers' forfeiting substantial estimated tax payments in the event that they underestimated their actual liability by one cent. Moreover, the exception to duty as a cost would provide importers with even less comfort than the similar exception would to a taxpayer, because the importer must contend with a margin calculation that is far less predictable than even the tax calculation under the tax laws.

The unpredictability and unavoidable imprecision of the Commerce Department's dumping margin calculation would make it impossible for an exporter to be certain that it would have a margin of zero, and therefore qualify for the exception to treating duty deposits as a cost. The Department of Commerce treats each administrative review as a separate proceeding, and does not consider itself bound to follow the methodologies followed in previous reviews or the investigation.

Thus, an exporter attempting to price competitively, while not dumping, could never really be certain that it has achieved this goal until after the Department has completed its review (i.e., two years after the product is sold). The exporter could only feel confident that it will not be found to have dumped if it raises prices by so much that it cannot compete in the U.S. market. The real effect of duty as a cost proposals would be to force such excessively high price increases.

The distortive effects of treating duties as a cost would be multiplied over time. Since the dumping margin in each

review becomes the deposit rate for future entries, an exporter that had been reducing its dumping margin would instead have to pay increasingly high duties. The following charts illustrate this problem.

## II. Current U.S. System

<u>Review Period</u>	<u>FMV</u>	<u>Related Importer Expenses</u>	<u>Price to Unrelated Customer</u>	<u>USP</u>	<u>AD Deposit</u>	<u>AD Duties</u>	<u>Refund</u>
Invest.	100	10	100	90	--	10 (deposit)	
1	100	10	103	93	10	7	3
2	100	10	106	96	7	4	3
3	100	10	108	98	4	2	2

## III. Duty Deposits as a Cost

<u>Review Period</u>	<u>FMV</u>	<u>Related Importer Expenses</u>	<u>Price to Unrelated Customer</u>	<u>USP</u>	<u>AD Deposit</u>	<u>AD Duties</u>	<u>Add'l Duties</u>
Invest.	100	10	100	90	--	10 (deposit)	
1	100	10	103	83	10	17	7
2	100	10	106	79	17	21	4
3	100	10	108	77	21	23	2

Under the current system (Chart II), an exporter that reduced its margin of dumping by raising its U.S. prices would face declining antidumping duty payments and deposits. Under a duty as a cost system (Chart III), the same price increases would result in increasing antidumping duty payments, since the antidumping duty payment would become the deposit rate for future entries, which would then be deducted from U.S. price in the following review period. Antidumping duty payments would effectively be double-counted: once upon payment, and again in the following review period in the form of a deposit which would be forfeited. (Note that the additional duties payable in Chart III are equal to the total duties payable in Chart II.)

Proponents of the duty as a cost proposal claim that because the E.U. already treats antidumping duties as a cost, and because other countries may do so as well based on the permissive nature of Article 9.3.3 of the Antidumping Agreement, the U.S. must follow suit. This is not a justifiable reason for adopting a bad policy. The U.S. should avoid the adoption of unreasonable, yet permitted policies, both in the interest of creating a fair antidumping law that does not punish fairly traded imports, and in the interest of setting an example for other countries that are revising (and establishing) their dumping laws.

Even if other countries were to follow E.U. practice, this would prove far less harmful to U.S. exporters than if foreign countries were to adopt the version now proposed for the U.S. Under the duty as a cost proposals, the Department would calculate nearly all antidumping duties paid based on a treatment of antidumping duty deposits as a cost. By contrast, the E.U. treats antidumping duties as a cost only in reimbursement and review proceedings, which occur very infrequently in E.U. practice. Further explanation of this point requires an understanding of several aspects of the E.U. antidumping system which serve to mitigate (though not eliminate) certain of the egregious effects of treating antidumping duties a cost.

Unlike the U.S., the E.U. in its investigation calculates not a deposit rate representing estimated antidumping duties, but an actual antidumping duty rate to be assessed on all future entries. This "prospective" duty system eliminates the

need to review entries on an annual basis. It also provides importers with predictability, since they know at the time of importation the precise level of antidumping duties to be paid.

In most cases, importers in the E.U. will pay antidumping duties without further administrative action. In a small number of cases, however, importers request that reimbursement proceedings be conducted. The purpose of these proceedings is to permit the reimbursement of actual antidumping duties paid to the extent that the actual dumping margin has decreased. A similar proceeding, which is used even less frequently, is the discretionary review, the purpose of which is to reestablish the antidumping duty rate on all future entries.

It is only in the context of reimbursement and review proceedings that the E.U. practice of treating duties as a cost comes into play. Since these proceedings are rare, the vast majority of antidumping duties paid in the E.U. have not been calculated by treating duties as a cost. By contrast, because of the retrospective duty system in the U.S., nearly every antidumping duty paid would be calculated based on a treatment of antidumping duty deposits as a cost. Article 9.3.3 cannot be read to permit a general rule that antidumping duties will always exceed the dumping margin, as Article 9.3 requires that dumping duties do not exceed the dumping margin. This would be true even under an arrangement to limit or cap the amount of duty deposits which can be treated as costs.

The most important difference between the E.U. and U.S. dumping systems which mitigates the adverse effect of treating duties as a cost is the E.U.'s "lesser duty" rule, whereby the antidumping duties assessed are equal to the lesser of the actual antidumping margin, or the margin necessary to eliminate injury. Article 9.1 of the Antidumping Agreement encourages adoption of a "lesser duty" rule. Even in those proceedings in which the E.U. treats antidumping duties as a cost, the lesser duty rule often limits -- or prevents -- any increase of antidumping duties owed. Chart IV illustrates this point.

#### IV. Lesser Duty Rule (Based on Chart I, Cases 3 and 4)

Case	AD Margin Without Duty as Cost (Case 3)	AD Margin With Duty as Cost (Case 4)	Injury Margin	Actual AD Duty Assessed
1	5	15	10	10
2	5	15	5	5
3	5	15	3	3

Another difference between the E.U. system and the U.S. system that is significant is the previously described fact that the U.S. requires estimated antidumping duty deposits at importation, while the E.U. assesses final antidumping duties (which, again, are reimbursed only occasionally). This difference could critically affect the GATT legality of a duty as a cost provision in the U.S. Article 9.3.3, to the extent it authorizes treatment of duties as a cost at all, does so only for "the amount of antidumping duties paid." It would be difficult to argue before a GATT panel that a refundable deposit of estimated antidumping duties is an actual antidumping duty paid. Even if duty as a cost proposals were to limit the amount of duty deposits which could be treated as costs to the amount of the actual dumping margin calculated -- but not assessed -- it would still not be possible to argue that such calculated margins could be considered "duties paid."

Even if several aspects of the European system mitigate the effect of treating antidumping duties as a cost, it does not render this policy any more logical or fair. Duty as a cost



proposals are based on the fundamental error in logic that a cost can be calculated by reference to itself. By describing antidumping duties as an expense that should be deducted from U.S. price, proponents of duty as a cost are in effect proposing the following formula for calculating antidumping duties:

$$X = Y - (Z - X)$$

where: X is the amount of the antidumping duty,  
Y is the foreign market value, and  
Z is the U.S. price

In other words, antidumping duties are to be calculated by deducting from foreign market value the result of deducting antidumping duties from U.S. price. This formula cannot be solved, and it is only by substituting for X on the right side of the equation (the duties to be deducted from U.S. price) an estimate of the final value of X that it can be calculated at all.

There is no reasonable basis for treating antidumping duty deposits as a cost to be deducted from U.S. price. It is an unfair, illogical proposal. Adoption of this proposal by the U.S. would signal other countries that they, too, should make their antidumping laws as trade restrictive as possible. Ultimately, it will be U.S. exporters who will have to suffer the consequences of treating duties as a cost.

#### 11. INDIVIDUAL MARGINS, SAMPLING, AND VOLUNTARY RESPONSES

In certain cases, the number of exporters, producers, importers or types of products involved can be unwieldy, as for example in the investigation of cut flowers, where the industry is characterized by a huge number of small growers and a vast array of flower types. The Agreement provides that, in such a case, it may be impractical for the administering authority to review and analyze responses from every exporter or producer so as to calculate individual, company-specific dumping margins for every affected entity in the country under investigation or review. It therefore permits the use of sampling, or alternatively, in such a case, selection of a group of respondents accounting for the largest percentage volume of exports to the United States.

At the same time, the Agreement recognizes the inherent unfairness of arbitrary sampling or selection methods. For example, if the authorities decide to examine only a percentage of the volume of exports from the subject country, they will tend to select the largest producers/exporters in order to obtain a large volume of export coverage while limiting the number of individual responses they need to examine. Smaller companies might operate less efficiently than larger producers, such that the larger companies' responses would not reflect dumping by smaller companies. The differences would likely be especially significant in an investigation or administrative review in which the dumping margin is based on the respondent's cost structure.

Similarly, a sample might be non-representative of the entire industry and include only those companies engaged in significant dumping. In that case, the companies left out of the sample are forced to pay antidumping deposits or duties at a rate unrelated to their own fair pricing practices. They are thus penalized for the unfair trade practices of others over whom they have no control.

To safeguard against possible unfairness to petitioners or respondents, the Agreement specifies that any sample must be "statistically valid." This should ensure that the sample is representative of the industry as a whole. As a further safeguard against unfairness and in the interest of improved transparency, the Agreement provides that the affected exporters,

producers or importers should be able to participate with the administering authorities in selecting the statistically valid sample or the group of respondents accounting for the largest volume percentage of exports.

Furthermore, the Agreement provides that, even where the authorities opt to use sampling or a selected "volume group" of respondents and have obtained the advice and consent of all affected respondents, any respondent outside the sample or volume group who wishes an individual dumping margin shall be entitled to one. This means that the authorities must examine that respondent's information, if timely submitted. The only exception is where such an individual examination would be unduly burdensome to the authorities so as to prevent the timely completion of the investigation. However, this potential loophole should not be abused by the authorities. Notably, the Agreement stipulates that voluntary responses shall not be discouraged.

Current U.S. law does not contain any provision regarding sampling or other selection methods to limit the number of respondents whose data will be examined by the administering authorities.

## 12. CALCULATION OF "ALL OTHERS" RATE WHERE SAMPLING HAS BEEN USED

Under current practice, the Commerce Department includes all margins calculated in an investigation or review in the weighted average rate applied to other producers and exporters that are not investigated or reviewed (the "all others" rate), regardless of whether those margins were based on "best information available" ("BIA"). As a result, the use of BIA, either in a punitive manner against non-cooperating parties or in a less adverse manner against cooperating parties whose information is discarded by Commerce, adversely affects those parties that are not included in an investigation or review through no choice of their own. The impropriety of such an adverse effect was recognized by the Court of International Trade in National Knitwear & Sportswear Association v. U.S. 779 F. Supp. 1364, 1373 (Ct. Int'l Trade 1991): "[T]he application of a punitive, or even quasi-punitive rate to innocent parties . . . would be contrary to the antidumping duty law, which is intended to be remedial, not punitive."

Article 9.4 of the Antidumping Agreement addresses those concerns by providing that the calculation of the "all others" rate shall not include margins that are de minimis or based on BIA. Implementation of Article 9.4 will safeguard the fairness of U.S. antidumping proceedings by remedying the adverse impact on non-participating parties and will demonstrate that the United States remains committed to ensuring that the implementation of its trade laws is done in a fair and equitable manner.

## 13. PROVISIONAL DUTY CAP

Like the new GATT Agreements on Antidumping and Subsidies, the 1979 Antidumping and Subsidies Codes also provide that if the margin calculated in the final determination is higher than the margin calculated in the preliminary determination, the difference shall not be collected. This is commonly referred to as the "provisional duty cap." Current U.S. antidumping and countervailing duty laws contain provisions implementing these 1979 Code requirements.

Until 1992, the U.S. had uniformly applied the provisional duty cap in both countervailing duty and antidumping duty cases. In July 1991, the Court of International Trade issued a decision in Zenith Electronics Corp. v. United States, 770 F.Supp 648 (Ct. Int'l Trade 1991) that overturned the



Commerce Department's longstanding statutory interpretation, namely that the provisional measures duty cap apply in both antidumping and countervailing duty investigations regardless of whether entries of merchandise between the preliminary and final determinations are secured by cash deposits, bonds, or other security. The Zenith court ruled that the provisional duty cap applies in antidumping cases only if the provisional duty is secured by cash deposits, and does not apply if the provisional duty is secured by bonds. The CIT based its decision, in large part, on a difference in language of the 1979 GATT Subsidies Code and the 1979 GATT Anti-Dumping Code. Although the Commerce Department disagreed with the Zenith court's decision, Commerce changed its policy in 1992. Thus, in accordance with the CIT decision, the Commerce Department now applies the provisional duty cap in antidumping duty investigations only if the preliminary duties are paid with cash deposits.

In September 1993, the Court of Appeals for the Federal Circuit disagreed with the lower court's finding, and found that the Commerce Department's application of the provisional duty cap in antidumping investigations (regardless of whether the provisional duties were secured via cash deposits or bonds) was reasonable. The CAFC found that the distinction drawn by the CIT between the language in the GATT Subsidies and Anti-Dumping Codes was based on an incorrect House of Representatives reprint of the 1979 GATT Anti-Dumping Code.

The new GATT Antidumping Agreement makes it explicit that the provisional duty cap applies in antidumping investigations regardless of whether preliminary duties are secured by cash deposits, bonds, or other security. Thus, the relevant provision of the U.S. antidumping law should be amended to reflect the provision in the new GATT Antidumping Agreement. This can easily be achieved by mirroring the language in the parallel provision in the current countervailing duty law.

#### 14. CRITICAL CIRCUMSTANCES

The implementing legislation should conform current law and practice to the new Antidumping Agreement. This requires little change from existing law and practice and will codify much of what already exists in agency regulations.

Concerning "history of dumping," while orders that were later revoked may be indicative of prior dumping, once an order is revoked, there is no longer objective evidence that dumping is continuing, and dumping cannot be presumed. In addition, it is unreasonable to assume that a revoked order would put importers or purchasers on notice about the less than fair value prices of the product at issue. Therefore, while outstanding dumping orders may be considered to demonstrate a history of dumping, an order that is no longer outstanding shall not be considered in determining whether a history of dumping exists.

An amendment to the statute which would require the Commission to share information with the administering authority upon request would eliminate the difficulty the administering authority has experienced in determining the share of domestic consumption accounted for by imports. 19 C.F.R. § 353.16(f)(1). In determining whether a certain volume is massive, the individual industry must be considered. There can be no specific percentage increase in import volume and market share that constitutes "massive" for all situations. Any decision that imports are massive must be based on substantial evidence on the record rather than on assumptions or arbitrary percentages.

Similarly, a determination whether an importer knew or should have known that it was buying at dumped prices should be based on objective facts concerning the individual situation after the filing of the petition (public threats of future antidumping cases should not be considered here, to avoid



encouraging anti-competitive behavior). Therefore, there can be no hard-and-fast numerical test or presumption for this determination.

Finally, the decision concerning critical circumstances affects the investigations of both agencies. Therefore, in making any determination of critical circumstances, the administering authority should be required to consult with the Commission.

## 15. BEST INFORMATION AVAILABLE

Uncertainty exists concerning the selection and application, under U.S. law, of best information available ("BIA"). The current authority for the use of BIA is very broad and undefined. While the use of punitive BIA against non-cooperating parties is a widely understood and accepted practice, the policy underpinning the selection and use of BIA in situations where a party has attempted in good faith to respond to the Department's inquiries yet has failed to adequately do so, and the factors governing such selection and use, are less clearly defined and understood. This uncertainty results in a dilemma: On the one hand, the party has attempted to be cooperative to the best of its ability, yet the Department has decided not to accept the information the party has provided. On the other hand, the Department must make a determination, yet it has no reliable information on which to base such a determination.

Annex II to Article 6.8 of the Antidumping Agreement reflects the understanding previously reached by the GATT Antidumping Code signatories, including the United States, concerning the use of best information available ("BIA"). "Recommendation Concerning Best Information Available in Terms of Article 6 : 8 Adopted by the Committee on 8 May 1984," BISD 31S/283 (1985). This provision of the Antidumping Agreement was one of the least controversial, agreement having been obtained on its inclusion in the final Uruguay Round Agreement as early as December 1990.

Implementation of Annex II of the Agreement will diminish the existing uncertainty surrounding the use of BIA by the U.S. First, the proposed amendments set forth parameters governing the gathering of information, an area not currently addressed by the statute. This clarification of how and when information may be obtained is intended to improve the process by which information is gathered, leading to more complete and accurate responses and the use of the most germane information in making determinations. Second, the legislation should clarify the appropriate usage of BIA in an antidumping investigation or review. These clarifications should set out when and how BIA will be used, increasing the transparency of antidumping investigations and reviews and maximizing the potential for participation and cooperation by all interested parties. The improvement in the accuracy of the overall results of investigations and administrative reviews as a result of these provisions will ensure that the domestic industry is afforded the most appropriate level of protection allowable under law.

## D. INJURY ISSUES

### 1. CUMULATION

While recognizing that injury may occur from simultaneous "hammer blows" on the same point, the Agreement does not permit the automatic application of cumulation whenever imports from more than a single country are being investigated and compete. Rather, cumulative assessment of injury may be undertaken only if:

- 1) the margin of dumping is more than *de minimis*;

- 2) the volume of imports is not negligible;
- 3) that the imported products and the like product compete; and
- 4) that in light of the conditions of competition between the imports and the like product, cumulation is appropriate.

Under the Agreement, all four conditions are necessary. With respect to the fourth condition, the implementing legislation should instruct the Commission to pay particular attention to the conditions of competition to ensure that the imports and the like product interact in the marketplace in such a way as to warrant cumulative analysis of injury.

The implementing legislation should codify the current U.S. practice of allowing dumped imports subject to existing orders and suspension agreements to be considered for cumulation, but only if the order or suspension agreement has been in effect for less than six months. See Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 620 (Ct. Int'l Trade 1993) ("[I]mports subject to a very recent order may continue to contribute an injury to the domestic industry."). In addition, pursuant to Articles 3.1, 3.2 and 3.3 of the Agreement, the implementing legislation should provide that imports may be considered for cumulation in making a final injury determination only if there has been a determination of dumping in each investigation. Otherwise, the Commission would be commingling imports that definitively have been found to be dumped with imports that only are alleged in a petition to be dumped, for purposes of finally determining whether the dumped imports are causing material injury. Likewise, for preliminary determinations, there is also a requirement of simultaneity. However, the Commission should avoid cumulating imports that will not be subject to cumulation in the final determination.

## 2. IMPACT OF DUMPED IMPORTS ON DOMESTIC INDUSTRY

The Agreement requires consideration of the magnitude of the margin of dumping in assessing the impact of dumping. Accordingly, the implementing legislation should require that the magnitude of the margin of dumping be considered in relation to the conditions of competition that are distinctive to the affected industry, and should be codified within the current statutory provision governing the "impact on the affected industry."

## 3. CAUSATION

Under current U.S. practice, when an industry is weakened by factors other than the dumped imports, the industry is then considered to be more "vulnerable" to dumped imports than one that is not so weakened. An industry that is more vulnerable to dumped imports is an industry that is more likely to be found injured by reason of a given set of dumped imports. Thus, under current practice, the presence of injurious economic factors other than the dumped imports increases the probability of an affirmative injury determination, all other things being equal. The effects of injurious factors other than the dumped imports are, by this means, attributed to the dumped imports.

During the negotiations, however, it was recognized that causation is central to the injury determination, and therefore, a causal relationship between the dumped imports and the injury to the domestic industry must include an examination of factors other than the dumped imports so that injury caused by those other factors is not attributed to the dumped imports. That is, Article 3.5 prohibits ascribing the injurious effects of other economic factors to the dumped imports based on a finding of "vulnerability." Thus, the implementing legislation should

provide that the presence of injurious economic factors other than the dumped imports shall not be considered in a manner that increases the likelihood of finding material injury by reason of the dumped imports.

#### 4. THREAT OF MATERIAL INJURY

The Agreement adopts the Code Committee language regarding the indicia of threat of material injury. The Agreement recognizes that cases involving threat of material injury are to be considered and decided with special care. In particular, a finding of threat must be based on substantial evidence and must not be found merely because present injury cannot be demonstrated. The implementing legislation should conform the language of the statute with that of the new Agreement.

### E. MISCELLANEOUS ISSUES

#### 1. SUNSET PROVISION

Article 11.1 of the agreement provides "an antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury." In the past 10 years, requirements in E.U., Canadian and Australian antidumping law for periodical review of both dumping and injury ("sunset") have proven to be a practical means of implementing that provision. In addition, sunset reviews have prevented a potentially needless drain on the resources of both the government which administers the antidumping law and interested parties. Therefore, Article 11.3 was included in the Agreement to provide for the termination of antidumping duties after five years, absent a determination of likely future dumping and consequent injury.

Article 11.3 provides that an antidumping order will expire five years after the date of its imposition, unless the authorities conduct a review of both dumping and injury and determine that the revocation of the antidumping duty would be likely to lead to a continuation or recurrence of dumping and injury to the domestic industry. Article 11.3 thus provides a mechanism to effectuate the general goal set forth in Article 11.1. Article 11.3 expressly provides that the authorities show that the continuance of the order beyond the five years is necessary to offset dumping and injury. Indeed, in the event that the domestic industry does not request a review, the Article provides that the authorities may themselves initiate a review.

Sunset provisions have been beneficial to U.S. exporters in international markets. Many U.S. companies have been relieved of antidumping duties under the sunset provisions of Australia, the E.U. and Canada. In the E.U. alone, the sunset provision triggered the termination of duties on numerous products, including paper, polyester yarn, and several chemicals. The E.U. terminated eleven antidumping duty orders in the period 1987-1990 against the U.S. alone. In Canada, duties were terminated on at least seventeen different products, including medical equipment, steel pipe and chemicals.

Under current United States practice, antidumping orders may be terminated where a respondent demonstrates that there have been no dumped sales for three consecutive years. Commerce, however, has interpreted the statute as providing it with discretion not to revoke the order even if that test is met. Antidumping orders may also be terminated based upon a showing of changed circumstances in a review conducted by the administering authority or the Commission. The burden in such reviews is difficult to meet, and in practice rarely results in revocation. The lack of an effective and efficient mechanism to terminate antidumping duty orders has contributed to the excessive backlog of antidumping administrative reviews at Commerce. With a more



systematic method of eliminating outdated antidumping orders (and the accompanying reviews) many of which have been in place for 8-12 years, Commerce will be able to focus more of its resources and time on the more current cases. In addition, countries which will be following the new Agreement (such as Mexico, with antidumping duties in place against more than thirty-five U.S. exporters) can be expected to treat our exporters no better than we treat their's.

The current statute does not provide a sunset provision. Consistent with Article 11.1 and 11.3 of the Antidumping Agreement, the law should be amended to provide for the termination of antidumping duties five years from the date of the institution of the antidumping order, absent a determination by the administering authority and the Commission that termination of the order is more likely than not to result in future dumping and consequent injury to the domestic industry. As Article 11.3 expressly provides for termination of the antidumping duty "not later than five years from its imposition," the legislative amendment should provide that any review of injury or dumping shall be accomplished before the five year deadline. These deadlines are particularly important in view of the historic backlog of administrative reviews at Commerce. In order to avoid a potentially needless drain on government and interested party resources, parties subject to an order may accept the margin calculated in the most recent Commerce administrative review and decline a separate dumping review. As Article 11.2 of the Antidumping Agreement provides parties with the right to request review of the need for the continued imposition of the antidumping duty at any time "provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty", sections 751(b) (changed circumstance review at the Commission or Commerce) and 751(c) (revocation of the antidumping duty order by Commerce) of the statute should remain in place.

The sunset amendment should include certain basic elements which are integral to the existing statutory framework governing present material injury investigations, including procedural elements such as the opportunity for a hearing and adequate notice, as well as substantive elements such as economic factors relevant to the Commission's analysis, and the prerequisites for initiation of the review.

The sunset amendment should provide a list of relevant economic factors to be considered in the Commission's determination. Consistent with the prospective (rather than current) nature of the Commission's inquiry (i.e., whether injury is more likely than not to continue or recur, not whether the industry is suffering current injury) the emphasis should be placed on factors which are analogous to those considered relevant in the context of an analysis of threat of material injury under section 771(7)(F) of the statute. Similarly, the Commission should have the discretion to cumulate where appropriate.

In addition, the legislation should incorporate the elements of an initiation determination, including the requirement of standing as well as petition requirements. Similar to section 732(b), the sunset amendment should provide that petitioners are required to present information, essentially establishing a prima facie case, showing the likelihood of continuation or recurrence of injury. Once petitioners have provided information which the Commission deems sufficient to warrant an investigation, the Commission would then be responsible for initiating an investigation to determine whether injury is likely to continue or recur. The Commission would then conduct an objective examination of the evidence, with no burden of persuasion on any party. The Commission's subsequent affirmative or negative finding would be required to be supported by substantial evidence and in accordance with law.

## 2. SHORT SUPPLY PROVISION

Current U.S. law contains no mechanism to permit flexibility in dealing with situations in which domestic producers are unable to meet the needs of U.S. consumers, particularly industrial users, for a product subject to antidumping duties or certain other import restrictions. Once action has been taken to impose duties or otherwise restrict imports into the United States pursuant to the U.S. antidumping duty law, all imports of the affected merchandise are subject to such duties or restrictions. Article 9.1 of the GATT Antidumping Agreement expressly permits countries to waive the imposition of duties.

U.S. law should be amended to include a common-sense provision to remedy those situations where domestic supply is non-existent or insufficient to satisfy the demand for merchandise subject to antidumping duties. The absence of such a provision in current U.S. law results in windfall earnings for the foreign producers being forced to charge higher prices to U.S. industrial users, while domestic suppliers cannot benefit by expanding production. The higher costs resulting from antidumping duties on products that cannot be obtained from domestic sources have a serious adverse effect on the ability of industrial users to compete in world markets and may ultimately translate into a loss of U.S. jobs.

This concern is not based upon speculation or misplaced fear. In one recent example, the United States imposed antidumping duties on certain flat panel display imports from Japan, even though no U.S. producer had sufficient production capacity to meet demand. In the Flat Panel Displays case, the necessary technology had changed drastically when consumers began to demand truly portable "lap-top" computers. U.S. portable lap-top computer makers could not pay more for the computer screens than their Japanese competitors and still remain competitive in the lap-top market. No U.S. producer had commercial production facilities to make the new technology screens. One major U.S. computer manufacturer had itself made screens with the older technology for use in other products, but recognized that it could not compete in the lap-top market using that technology. That company therefore sold the factory. Apple, IBM and Compaq were forced to move their lap-top computer operations off-shore because of the prohibitively high antidumping duties imposed on flat panel display imports of which there was insufficient supply in the United States. If there had been a time- and quantity-limited short supply provision in U.S. law, the U.S. computer manufacturers would have been able to import the needed components free of antidumping duties until there was sufficient U.S. production capacity to meet the demand. Instead, the United States lost a substantial number of manufacturing jobs, as U.S. computer manufacturers had to set up off-shore facilities to produce the lap-tops and remain competitive in world markets.

The U.S. Chamber of Commerce has recognized the need for a mechanism in U.S. law to address the problem of inadequate domestic supply of products subject to antidumping orders. The chairman of the relevant Chamber committee, Timothy Regan of Corning, has stated that

. . . the Chamber came up with a "no supply" provision, which basically said that in situations when an American company is not willing to make a product covered by a dumping order, some sort of exemption procedure could be put in place temporarily to allow for the importation of that product not subject to dumping duties.



The intent of a short supply program, which could be based on the system in place from 1989 to 1992 in connection with the steel voluntary restraint agreements, is to allow a time and quantity limited exemption from duties or certain other import restrictions in those instances where the Secretary of Commerce determines that the U.S. industry is unable to produce and deliver sufficient quantities of the product in a timely fashion at a non-excessive price. Such a program is vital to the health and competitive position of U.S. companies, particularly those that must compete with foreign companies around the world that produce industrial products dependent on imported inputs.

The implementing legislation should also provide that any merchandise subject to an antidumping order that has been admitted to a foreign trade zone and transformed in the zone would receive the benefit of any short supply determination regarding the merchandise admitted to the zone. Under the current regulations on foreign trade zones, imports subject to antidumping orders can only be admitted to a zone in "privileged foreign" status, meaning that they will be subject to the payment of antidumping duties if entered into U.S. Commerce. Imports into foreign trade zones are often transformed in the zones into products that are not covered by antidumping order prior to entry into the customs territory of the United States. Such products should not be subject to the payment of antidumping duties if a short supply exemption is granted on the imported products.

### 3. PROSPECTIVE DUTY SYSTEM

The implementing legislation should provide for a prospective duty assessment system. A prospective duty system has several advantages over the retrospective duty system currently used by the United States. First, and most importantly, exporters and producers are informed of the specific "fair" price at which they must sell to the United States in order to be considered selling at non-dumped prices. There are no unknown liabilities, as under a retrospective duty system in which the final duty owed is not determined until long after (often several years after) the entry has been made. Instead, the price information given to an exporter or producer under a prospective duty system can immediately be incorporated into the business dealings of these parties. Therefore, from a business perspective, the certainty and predictability of ultimate duty liability inherent in a prospective duty system more than compensates for any lesser degree of accuracy in the actual assessment of the margin of dumping.

Second, a prospective duty system improves the costs, efficiency, and administerability for the Commerce Department. Annual reviews are not required in order to ascertain the actual level of dumping, as under a retrospective system, although reviews may still be conducted in a prospective system if a refund is due to an exporter or producer. Third, and finally, a prospective system is more directly market-corrective than a retrospective system. By providing a strong incentive to raise prices (*i.e.*, non-liability for duties), a prospective duty system has a more direct impact on the market than does a retrospective system, in which estimated duties must be deposited regardless of the ultimate actual duty level determined in the subsequent review. This more straightforward method of adjusting for dumping reduces the role of government (which collects estimated duties and determines final duties under a retrospective system), while continuing to provide effective relief to the domestic industry.

Because of the advantages of a prospective system, particularly the need to improve the efficiency of the U.S. Government in this time of budgetary constraints, it is deemed desirable to alter the method by which the U.S. Treasury collects antidumping duties from a retrospective system to a prospective system. The implementing legislation could accomplish such a



change by adjusting the method in which preliminary and final determinations result in the collection of provisional and final antidumping duties, and the way in which reviews are conducted after the imposition of an antidumping duty order. The statutory language could be drafted so as to encompass the protections set forth in the Antidumping Agreement, to ensure that the new system is GATT-consistent.

The Department of Commerce's rules provide that "[n]ot later than 365 days after the anniversary, [the Department shall] issue final results of review." 19 C.F.R. § 353.22(c)(7). Because the United States assesses antidumping duties on a retrospective basis, the amount of an importer's liability for duties remains uncertain until the final results of the Department's review are issued. Under current U.S. practice, a court order must be obtained to enforce the Department's rules, including the time limit for completion of administrative reviews. This is an expensive and impractical solution, particularly for small importers. It also imposes a burden on the U.S. judicial system, which must take time and resources away from more substantive issues to remedy the Department's administrative delays.

The Antidumping Agreement mandates that the retroactive assessment and refund of duties be made within prescribed time periods, which are drawn from current U.S. practice. Accordingly, as a monetary incentive for compliance, and as a means to avoid the waste of judicial resources, the law should be changed to require that all refunds that are paid after expiration of the Agreement's prescribed time periods shall be accompanied by double the applicable interest otherwise owing.

#### **4. FOREIGN ANTIDUMPING ACTIONS AGAINST U.S. EXPORTERS**

The global proliferation of antidumping laws poses a real and serious threat to U.S. exports, which historically have been subject to more antidumping cases abroad than exports from any other country. While the GATT Antidumping Agreement provides for minimal procedural standards and transparency governing the antidumping laws of all GATT members, it does not extend to U.S. exporters all of the procedural protections extended to interested parties in the United States. For example, as the Advisory Committee on Trade Policy and Negotiations (ACTPN) noted in its report on the Uruguay Round, "The new standards will not improve practices in our largest market, the EU[;] . . . standards of judicial review there remain quite unfavorable to U.S. exporters." ACTPN Report at 89 (Jan. 15, 1994). Consequently, it is imperative that the United States Government closely monitor and report on foreign antidumping practices to assure that foreign antidumping laws are applied to U.S. exports in a manner that is fair and consistent with the GATT Antidumping Agreement. The implementing legislation should provide for the Administration to provide an annual report to Congress detailing the application of foreign antidumping laws to U.S. exports. The report should include information on the U.S. products subject to investigation, the U.S. companies affected, the foreign companies bringing the proceedings, the disposition of the proceedings, any measures taken by the foreign government that may be inconsistent with the Antidumping Agreement and all measures taken by the U.S. Government to assist U.S. exporters, including any action taken by the U.S. Government to refer the matter to the GATT Dispute Settlement Body.

COUNTRY OF EXPORT	Austria	Austria	Brazil	Canada	EEC	Finland	India	Japan	Korea	Mexico	New Zealand	Poland	Sweden	U.S.	TOTAL
Argentina	0							1			2				11
Australia	1			1								1			2
Bangladesh	1		2		1									1	3
Bolivia															0
Brazil	0			1											1
Canada	0			2											2
Chile	0				2						0				2
Colombia	0							1							1
Czechoslovakia	2		1	1											4
Denmark	0														0
Egypt	0														0
France	10		1	5	12			1		5	17	2		17	60
Germany, F.R.	1										1				2
Greece	2	6		3	1										12
Holland	1				2										3
India	1														1
Indonesia	11														11
Italy	0														0
Japan	1														1
Korea	3														3
Malaysia	0														0
Mexico	0														0
Netherlands	0														0
New Zealand	0														0
Norway	0														0
Poland	0														0
Portugal	0														0
Spain	0														0
Sweden	0														0
Switzerland	0														0
Taiwan	0														0
Thailand	0														0
Turkey	0														0
U.S.	0														0
U.S.S.R.	0														0
Yugoslavia	0														0
TOTAL	211	6	17	79	60	6	6	3	13	80	25	0	5	202	783

Source: Berni - Annual Reports Under Article 14 of the Agreement OAT11 ADP/145/Adds 2 - 9 ADP/146/Adds 2 - 8 ADP/148/Adds 2 - 11 ADP/162/Adds 2 - 10 ADP/170/Adds 2 - 10 ADP/171/Adds 2 - 10 ADP/189/Adds 2 - 12 and ADP/102/Adds 2 - 11

**BEFORE THE  
SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES**

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**CONTINUATION OF HEARINGS ON THE  
TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND  
OF MULTILATERAL TRADE NEGOTIATIONS**

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**WRITTEN STATEMENT OF THE FLORAL TRADE COUNCIL**

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February 28, 1994

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**I. INTRODUCTION**

These comments are submitted on behalf of the Floral Trade Council, pursuant to the Honorable Sam M. Gibbons' January 25, 1994, announcement of continuation of hearings on the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. The Floral Trade Council is a U.S. trade association the majority of whose members are domestic producers or wholesalers of fresh cut flowers in the United States and is located at 1152 Haslett Road, Haslett, Michigan 48840 (telephone (517) 339-9765). The Floral Trade Council respectfully requests that Congress adopt implementing legislation that (1) strengthens the antidumping law, (2) protects U.S. breeder's rights under plant variety patents, (3) ensures country of origin marking for fresh cut flowers, and (4) directs that pesticide residues on imported fresh cut flowers be studied. The Floral Trade Council urges Congress to consider the following comments in finalizing implementing legislation for the Final Act text.

**II. ANTIDUMPING DUTY PROVISIONS**

The United States is a net importer of fresh cut flowers. Over the past twenty years, the U.S. fresh cut flower industry has competed with surging, low-priced imports of fresh cut flowers. Because flowers compete in the U.S. market primarily on the basis of price, the result has been the loss of over 5,000 U.S. cut flower growers with a resulting loss of over 30,000 jobs. For these reasons, it has been necessary for the fresh cut flower industry to resort to various trade remedies, including the antidumping and countervailing duty laws.

As early as 1979, Roses Incorporated filed a petition which established that rose imports from Israel benefitted from countervailable subsidies. In 1982, Roses Incorporated filed a petition alleging that roses and other fresh cut flowers from Colombia were unfairly subsidized. The Floral Trade Council also filed petitions in 1986, which established that imports from various countries were being dumped in the U.S. market or unfairly subsidized. After proving material injury by reasons of those imports, the International Trade Administration ("ITA") issued a series of antidumping and countervailing duty orders and suspension agreements in 1987. The following list reflects those countries with flowers subject to orders or suspension agreements in 1994:



LIST OF OUTSTANDING ANTIDUMPING/COUNTERVAILING  
DUTY ORDERS/SUSPENSION AGREEMENTS

YEAR	ORDER/AGREEMENT	COUNTRY
1981	countervailing duty order	Israel
1983	countervailing duty suspension agreement	Colombia
1987	countervailing duty suspension agreement	Colombia
1987	antidumping duty order	Colombia
1987	antidumping duty order	Chile
1987	countervailing duty order	Chile
1987	countervailing duty suspension agreement	Costa Rica
1987	antidumping duty order	Ecuador
1987	countervailing duty order	Ecuador
1987	antidumping duty order	Kenya
1987	antidumping duty order	Mexico
1987	countervailing duty order	Netherlands
1987	countervailing duty order	Peru

On February 14, 1994, the Floral Trade Council filed a petition with the International Trade Administration and International Trade Commission alleging that rose imports from Colombia and Ecuador were being dumped in the U.S. market. As an import sensitive industry, the U.S. fresh cut flower industry needs strong trade remedies. Given the number of antidumping duty orders outstanding on imported flowers, the U.S. fresh cut flower industry has a particular interest in Uruguay Round implementing legislation that reflects its concerns regarding the final agreement's provisions on antidumping.

**Standing:** Implementation of Article 5 of the final GATT text regarding the initiation of antidumping proceedings could significantly affect the ability fresh cut flowers growers to obtain the relief envisioned by Congress. Upon receipt of a petition, Article 5 will require the International Trade Administration to conduct a pre-initiation investigation which examines the degree of "support for, or opposition to, the application expressed by domestic producers of the like product." Final Text at Art. 5.4. The agency must determine that the application has been made "by or on behalf of the domestic industry." The relevant test is whether the petition is supported by those domestic producers whose collective output is more than 50 percent of total production of the like product produced by that portion of the domestic industry expressing their support. If the domestic producers in support of the petition constitute less than 25 percent of total production of the like product produced by the domestic industry, no investigation will be initiated.

The negotiators, however, recognized that the pre-initiation standing investigation must be modified when the petition is brought on behalf of a fragmented industry. Footnote 13 to Article 5.4 explicitly permits the use of statistically valid sampling techniques to determine support for the petition filed on behalf of fragmented industries with an exceptionally large number of producers. Implementing legislation for Article 5.4 should account for the difficulty of domestic producers in a fragmented industry such as the flower industry to establish the support of producers responsible for over 25 percent of total production.

The U.S. fresh cut flower industry is comprised of hundreds of growers, many of which are small, family-owned and operated businesses. As explained above, the U.S. fresh cut flower industry continues to experience the loss of growers. To date, there is no known comprehensive list of U.S. fresh cut flower growers. Hence, without the ability to sample, flower growers might not be able to satisfy the requirement of Article 5 on an absolute basis.

In the legislative history to the implementing legislation, Congress should make it clear that footnote 13 should apply, at minimum, to fragmented industries such as the fresh cut flower industry. ITA should be authorized to sample in order to determine the support for a petition. As the Court of International Trade has recognized:

Unfair trade proceedings are very expensive, thus, they are often brought by trade associations as opposed to individuals. Individuals may file petitions. The filing of a petition by a trade association, however, is normally some indication, in itself, of industry support. Certainly it is unlikely that FTC would file a petition if the majority of its members opposed it.

*Florex v. United States*, 705 F. Supp. 582, 587-88 (CIT 1989).

Further, a certain number of fresh cut flower growers are either related to foreign exporters/U.S. importers or are themselves importers of fresh cut flowers. For this reason, it is important that these growers are excluded from any poll taken to determine support for a petition. Article 4.1 of the final GATT text specifically directs the agency to exclude from the definition of "domestic industry" producers that are related to foreign exporters or importers or are themselves importers of the allegedly dumped product. Congress should ensure that implementing legislation specially excludes those producers from a pre-initiation standing investigation. Finally, in order to relieve the burden on the agency and expedite the proceedings, ITA should be able to rely upon an affirmative allegation of standing by a petitioner (accompanied by evidence that the petitioner has obtained the minimum support). ITA should thereafter conduct a pre-initiation standing investigation only after receiving a challenge to petitioner's standing.

**Sunset:** Article 11 of the final GATT text limits the duration and, necessarily, the utility of antidumping duty orders. Under Article 11, all antidumping duty orders will have a lifespan of only five years. After that time, the agency may conduct a review upon its own initiative or upon a "duly substantiated request" by the domestic industry. The order will be terminated unless the agency determines that the expiration of the order "would be likely to lead to continuation or recurrence of dumping and injury."

As recognized by Congress and the courts, antidumping duty proceedings are extremely costly and burdensome. While Article 11 may balance the interests of domestic and foreign producers of manufactured goods, implementing legislation should account for the needs of all domestic industries, including agricultural industries. The U.S. fresh cut flower industry cannot financially support a campaign every four years to protect crucial orders. Flowers are grown year round, and flower production is labor intensive. Flower growers do not have in-house counsel or trade divisions to collect market research data

regarding dumping and injury. Many growers jeopardize the productivity of family-operated greenhouses when they devote their time and energy to the collection of financial data for submissions to the International Trade Commission. The Administration and Congress should make certain that sunset reviews are not unnecessarily complicated, do not require unnecessary information or involve unnecessary expense for domestic producers. For these reasons, adoption of implementing legislation for the sunset provision in Article 11 should reflect the limitations of U.S. industries in need of a strong antidumping duty law.

First, implementing legislation should provide that all existing orders, findings and suspension agreements are to be viewed as effective for "sunset" reviews from the effective date of the World Trade Organization. Likewise, implementing legislation should specifically provide for the full five year period permitted under Article 11 before sunset reviews are required. Second, a "duly substantiated request" by the domestic industry for a sunset review should not require petitioner to file the equivalent of a new petition. Rather, ITA should accept, *inter alia*, evidence of dumping margins in any previous review as sufficient evidence of the likelihood of the continuation or recurrence of dumping. It can be expected that foreign producers have an incentive to curtail dumping during the fourth year of the order prior to a sunset review. Thus, ITA should not revoke an order solely on the basis of lack of dumping during the fourth year. Likewise, with sufficient evidence of dumping, ITA should presume that such dumping causes injury to the domestic industry for purposes of requesting a sunset review. The International Trade Commission should also presume that imports would increase where there is underutilized capacity in the exporting countries or plans to increase capacity. Such presumptions could be rebutted by evidence submitted by parties seeking revocation of the order, but otherwise would require the agencies to continue orders in force.

Finally, foreign producers should have the burden to establish affirmatively that continued or recurring dumping is not likely. Current U.S. law provide for the revocation of antidumping duty orders or findings under certain circumstances: (a) cessation of dumping and (b) changed circumstances. Foreign producers have the burden of persuasion under existing law where changed circumstances are claimed (unless the issue is lack of ongoing interest by the domestic industry). Since much of the information relevant to the dumping inquiry is in the possession of the foreign producers and since dumping has not ceased, current U.S. law reasonably allocates burden. The implementing legislation should therefore require foreign producers to establish entitlement to revocation.

**Compensation:** As both the standing and sunset provisions of the final text substantially limit the relief available from injurious dumping, Congress should consider whether the antidumping duty law can continue to be useful tool as it is currently administered. Relief is generally made available only after imports have caused a devastating amount of damage, evidenced by yearly losses, bankruptcies, closed factories, forced layoffs of significant numbers of employees, reduced investments in research and development, and capital expenditures. Yet, neither the GATT nor U.S. law require industries to exhibit such an extreme level of injury before relief is available. The International Trade Commission should be encouraged to reconsider its current



interpretations of the antidumping statute so that relief is, in fact, made available early enough to be useful.

More importantly, petitioners and those in support of the petition should receive all duties finally collected by Customs under the orders. Such funds would (a) provide a powerful disincentive to foreign producers to continue dumping (as all such dumping duties would flow to the domestic producers), (b) offset the ability of related party importers to pay antidumping duties without passing them on to an unrelated purchaser, and (c) allow the injured industry to regain its position in the U.S. market or channel the funds to develop alternative products.

In this regard, Congress should note that GATT Article VI does not prohibit the payment of dumping duties collected to the petitioner and those in support of the petition. While some may argue that such funds are a form of subsidy, even assuming *arguendo* potential actionability (not clear under Article 2 of the Uruguay Round Final Act Subsidy Agreement), such payments would not be prohibited. Based on the first annual report from the Customs Service and the Department of Commerce (covering fiscal year 1992), potential duties paid to domestic industries would be about \$351 million/year (using fiscal year 1992 as typical). While not a significant amount of money to the Federal Government, such amounts would be important to the domestic producers facing continued dumping.

**Constructed value:** In order to calculate a margin of dumping, Congress has directed ITA to compare the U.S. price of the imported goods to the "foreign market value" of the merchandise. The statute provides three possible bases for foreign market value: (1) the price paid in the home market, (2) the price paid in a third country market, or (3) the constructed value of the merchandise. 19 U.S.C. § 1677b. The statute defines "constructed value" as the cost of manufacturing/cultivation plus general, selling, and administrative costs, plus profit. 19 U.S.C. § 1677b(e)(1). The statute also specifies that general expenses are not to be less than 10 percent of the cost of manufacturing/cultivation and that profit be not less than 8 percent of the cost of manufacturing/cultivation plus general expenses.

The final GATT text eliminates the statutory minimum general expenses and profit amounts in Article 2.2.2. Article 2.2.2 requires that "amounts for administrative selling and any other costs and for profits" be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer. These changes are troublesome given that, unlike sales prices the home or third country markets which are based on actual sales invoices and easily verified, constructed value has been viewed as being particularly susceptible to manipulation. The elimination of a statutory minimum amount of general expenses and profit heightens these concerns.

Implementing legislation should address two concerns. First, by definition, profit cannot be earned on below cost sales. Yet, under ITA's current practice, ITA will use all sales, whether or not below cost, to determine if the profit amount is above the 8 percent statutory minimum. See Antifriction Bearings from Various Countries, 58 Fed. Reg. 39,729, 39,751 (Dep't Comm. 1993) (Final Results Admin. Rev.). The result is to

dilute the amount of profit earned on sales made in the ordinary course of trade, thereby reducing constructed value and the dumping margin. In implementing legislation, Congress should specifically prohibit ITA from using profit amounts that were based on both above cost and below cost sales. According to Article 2.2.2., the profit figures is to be based on actual data pertaining to production and sales in the ordinary course of trade.

For example, in the case of perishable products such as flowers, ITA currently applies a modified cost test to determine if flowers are being sold in the home or third country markets at prices below the cost of production. See 19 U.S.C. § 1677b(b). ITA will use all sales sold if less than 50 percent of respondent's sales were below cost of production. If between 50 to 90 percent of respondent's sales were below cost of production, ITA would disregard only the below cost sales. If over 90 percent of respondent's sales were below cost of production, ITA will not use any of those sales as a basis for foreign market value and would use, instead, constructed value. See Certain Fresh Cut Flowers from Mexico, 57 Fed. Reg. 7732, 7733 (Dep't Comm. 1992) (Prelim. Results Admin. Rev.). Implementing legislation should require respondents to report actual profits on production and sales in the "ordinary course of trade" which excludes those sales excluded under the cost test. Further, Section 1677(15) defining "ordinary course of trade" should specifically exclude sales below cost. 19 U.S.C. § 1677(15).

Second, the profit earned by a related importer should be recognized in the dumping margin calculation. In reporting U.S. sales, exporters with related importers must report the sales price paid by the first unrelated purchaser (or the importer's resale price). This resale price is a proxy for the f.o.b. foreign port price that would have been paid by an unrelated importer. On a sale from an exporter to a related importer, the reported U.S. price will reflect both the exporter and the importer's profit on that sale. On a sale from an exporter to an unrelated importer, the reported U.S. price will reflect only the exporter's profit. Thus, it is necessary to deduct the related importer's (or reseller's) profit from the U.S. sales price for a fair comparison.

Despite the fact that many other countries deduct reseller profit, ITA has refrained from making the deduction because it is not specifically provided for under U.S. law. See Antifriction Bearings from Various Countries, 58 Fed. Reg. at 39,778. In implementing legislation, Congress should amend 19 U.S.C. § 1677a(d) & (e) to direct ITA to deduct the reseller's profit from U.S. sale price.

### III. INTELLECTUAL PROPERTY RIGHTS

Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights requires Members to provide for the protection of plant varieties "either by patents or by an effective sui generis system or by any combination thereof." U.S. growers do not generally "own" their flowering plants. For example, rose plants are leased or rented from companies that hold patents. Patents are enforced in the United States by frequent on-site inspections to determine whether new plants are being propagated from the leased plants without payment of royalties.

U.S. breeders have limited ability to enforce their patents on plants in foreign countries. By monitoring the volume of flowers imported from a given country versus the royalty payments, patent holders could detect cheating. But, flowers are not even marked with country of origin information. As a result, U.S. patentholders cannot determine whether imported merchandise is being propagated and sold without payment of royalties. Thus, breeders have an incentive to collect much lower royalties from foreign growers in order to obtain any payments at all. In contrast, U.S. flower growers face high royalties for patented flowers. U.S. growers' royalty payments can be as high as \$10 of a \$10.50 plant, depending on the type of plant. More typically, the royalty on a rose plant is likely to be \$.65 of a \$3.00 plant (including royalty). This situation also translates into a competitive disadvantage for U.S. growers that do pay substantial royalties.

An important objective of the TRIPS agreement is to "promote effective and adequate protection of intellectual property rights." Part I. Toward this important end, Congress should direct the Administration to investigate and report on the enforcement of patent rights. Appropriate report language might state as follows:

In order to obtain complete information on whether foreign flower growers ignore U.S. patents or pay lower royalty payments, it is envisioned that an agency, such as the U.S. International Trade Commission or U.S. Department of Agriculture, will issue an annual report for five years which reviews, *inter alia*, (1) fresh cut flower exporting countries that recognize U.S. breeder's rights to patented plant varieties under domestic law, (2) fresh cut flower exporting countries that adhere to bilateral or multilateral treaties recognizing patent protection of plant varieties, (3) royalty payments made by U.S. growers as compared to foreign fresh cut flower growers/exporters.

#### IV. COUNTRY OF ORIGIN MARKING

U.S. law requires that merchandise imported into the United States be marked with country of origin information. 19 U.S.C. § 1304. Under § 1304(a)(3)(J), fresh cut flowers, however, have been excepted from this requirement under Customs' "J-List" of articles since 1939. 19 C.R.F. § 134.33. Only the immediate container in which the imported flower ordinarily reaches the ultimate purchaser must be marked with country of origin information. 19 U.S.C. § 1304(b). In practice, only the box or other container of imported flowers will be marked, if at all. Imported flowers are taken out of these containers either by wholesalers or retailers (including grocery stores) before resale to consumers. Hence, the ultimate purchaser rarely sees the country of origin designation on imported flowers.

If the box or other container of imported flowers is marked, the information is often incorrect or misleading. For example, some containers have been marked with the location of corporate headquarters or location of the importer as the "country of origin." Some flowers are even being repackaged in the United States and labeled "made in California." Indeed, Customs has noted in Information Bulletin No. 90-91 (11/28/90) that, through examination of fresh cut flower imports, "some containers show a U.S. address and bear no country of origin marking." Under these circumstances, Customs, the patent holder, and the ultimate purchaser may not know the actual country of origin of imported fresh cut



flowers. Of those sleeves with country of origin marking, the ultimate consumer's ability to determine country of origin is frustrated. When flowers are placed in a refrigerated room in buckets, country of origin marking on the bottom of the sleeve in dark printing is not conspicuous to ultimate purchasers.

Congress removed three types of merchandise from the J-List in the Trade and Tariff Act of 1984 to address a similar problem: (1) certain pipe and fittings, (2) compressed gas cylinders, and (3) certain manhole rings or frames, covers, and assemblies thereof. 19 U.S.C. §§ 1304(c), (d), & (e). The legislative history of that amendment indicates that significant evasion of the law prompted Congress to amend the scope of the J-List because conspicuous marking included marking the underside of a manhole cover. 1984 U.S. Code Cong. & Admin. News 4941-42. For these reasons, Congress should specifically remove flowers from the J-List and impose more specific marking requirements, such as tagging. The following language is suggested:

(f) MARKING OF FRESH CUT FLOWERS. -- No exception may be made under subsection (a)(3) of this title with respect to fresh cut flowers which shall be marked with the English name of the country of origin by means of tagging the stems if imported without sleeving or packaging, or by means of printed sleeving or other packaging if imported with sleeving or packaging.

There appears to have been significant evasion of the law with regard to the marking of fresh cut flowers. Because current law requires that only the outermost container in which the imported flower ordinarily reaches the ultimate purchaser must be marked with country of origin, only the box is so marked. This requirement has been interpreted by exporters to require country of origin marking of the box containing flowers. If the box or other container of imported flowers is marked, the information is often incorrect or misleading. As explained above, some containers even bear U.S. addresses without country of origin marking. Hence, the law should provide for correct marking in order to safeguard U.S. producers and breeders' interests.

## V. PESTICIDE RESIDUES

U.S. pesticide registration requirements discourage the marketing of safer, more effective pesticides which are available to foreign growers, but not U.S. growers. Foreign flower growers, however, are permitted to use more effective, yet extremely toxic, pesticides than U.S. flower growers. As a result, misuse of pesticides has been associated with flower production in Colombia, a chief competitor in the U.S. market. For example, a National Public Radio report has suggested that not only does the use of pesticides in Colombia endanger workers, but they may be contaminating the water table. See Morning Edition, National Public Radio (Oct. 12, 1992); Kendall, Financial Problems Take The Bloom Off A Colombian Success Story, Fin. Times 28 (9/14/93) ("The heavy use of pesticides -- required if flowers are to meet most import standards -- has caused health and environmental programs."). Although pesticide misuse in foreign cut flower production has been reported to cause harm to workers and the environment, the U.S. Department of Agriculture has not recently reviewed the consumer safety issue of pesticide residues on imported fresh cut flowers.

In the late 1970's, the U.S. government reported on the potential harm to U.S. florists and consumers of pesticide residues left on imported flowers. In February 1993, the Floral Trade Council requested information updating the U.S. Department of Agriculture's finding of potentially dangerous pesticide residues on imported fresh cut flowers in the late 1970s. According to information released pursuant to a Freedom of Information Act request, a comprehensive residue analysis of imported flowers has not been conducted since 1983. The 1983 study found that, although Plant Protection and Quarantine ("PPQ") officers were not in danger of "high exposure pesticide risk," PPQ officers were to use "Organic Vapor Monitoring Badges" to monitor exposure levels.

In establishing the Multilateral Trade Organization, Members sought both to "protect and preserve the environment and enhance the means for doing so in manner consistent with their respective needs and concerns at different levels of economic development." Agreement Establishing The MTO, at Introduction. Congress can see to this important objective by requiring the U.S. Department of Agriculture to update its study of pesticide residues on imported fresh cut flowers.

Respectfully submitted,

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BRIEF IN SUPPORT OF THE IMPLEMENTATION OF THE GATT AGREEMENTS  
WHICH OFFER DUTY ELIMINATION ON  
CALFSKIN, SHEEPSKIN, AND KIDSKIN LEATHERS

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I. Introduction

This brief is submitted on behalf of The Florsheim Shoe Company, a Division of Interco, Inc. ("Florsheim"), in support of its request that the United States government seek to eliminate the duties on imported calfskin, kidskin, and sheepskin leather, through the implementation of the agreements negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade ("GATT").

Florsheim, headquartered in Chicago, Illinois, is the largest domestic manufacturer of quality men's dress shoes and has been a leader in the footwear industry for the past 100 years. Florsheim distributes domestic and imported nonrubber footwear through a network of dealers, specialty shops and department stores throughout the United States, Australia, Canada, Mexico, the Orient and Europe.

Florsheim urges the U.S. government to eliminate the duties imposed on imports of calfskin, kidskin, and sheepskin leather, through the prompt implementation of the GATT-negotiated agreements. Reducing the cost of these necessary raw materials will promote domestic production of fine leather footwear, as well as the domestic production of other fine leather articles. As there are no longer substantial calfskin, kidskin, or sheepskin tanning industries in the United States, these duties simply penalize U.S. shoe manufacturers and other importers of fine leathers with no benefit accruing to any perceivable constituent. Inevitably these duties may lead to future shoe manufacturing plant closings and greater reliance on foreign factories to produce fine leather goods.

II. Leather

Leather is animal skin or hide that has undergone a tanning process. In the leather industry, the term "skin" is used to refer to the skin of smaller or immature animals, such as calves, pigs, sheep and young goats. The term "hide" is used to refer to the skin of large full-grown animals, such as cows or horses. The leathers of different animals have different textures and are suitable for different uses.



Animal skin or hide used to make leather consists of three main layers: (a) the epidermis, a thin outer layer which contains hair, hair follicles, as well as oil and sweat glands; (b) the dermis or corium, a thick middle layer which constitutes the main substance of the skin; and (c) the adipose, a thin inner layer of fatty tissue. In the processing of animal skins into leather, the epidermis and adipose layers are removed leaving the middle layer which is converted to the leather used to make shoes, handbags, upholstery, and other leather goods.

The skins and hides used to produce leather are by-products of the slaughter of animals for the meat-packing industry. Producing leather from animal skins and hides consists of four basic steps. First the skin is cured with a salting or drying procedure in order to preserve the skin during transportation from the slaughterhouse to the tanning facilities. This curing is necessary since animal skins and hides are highly susceptible to decay. After curing, the animal skins are tanned.

Tanning is a chemical treatment which converts the perishable skin into a stable, non-decaying material. There are various methods used to tan skins, including tanning through the use of vegetable tannins and tanning through the use of chromium salts. Chrome tanning, using chromium salts, is the major tanning process used today. Unless the tannery effluents are properly treated, chromium salts can be a major source of water pollution. After the skin is tanned, the leather is dried and softened. Lubricants, dyes and other finishing materials are then applied to the leather.

### III. Calfskin, Kidskin, and Sheepskin Leathers

All leathers are not alike. The look, feel, texture and use of leather depends upon the type of animal skin or hide and the tanning and finishing processes utilized. Different kinds of leather are not fungible. The leather used to make the sole of an expensive, high-quality men's dress shoe differs drastically from the shiny, supple calfskin leather used to make the upper of the same shoe.

Leather made from the hide of a full-grown cow is thick and durable, but not very pliable. The animal's pores and hair follicles, as well as scars and other defects are often visible in cow-hide leather. In contrast, calfskin leather tends to be a lightweight, extremely supple material without visible pores, scars, or other defects.

Calfskin leather is leather made from the skins of young cattle. Calfskin leather is renowned for its high quality and beautiful appearance. Invariably a product made with calfskin leather will be identified as such due to calfskin leather's reputation for quality. The identification of leather goods as being of calfskin leather is used as a marketing tool in the leather goods industry.

Calfskin leather is lighter in weight than cowhide leather and is extremely supple. It has tight pores and a fine grain which give calfskin its slick high-polished look. Because of the high quality of calfskin leather, fine leather footwear is almost exclusively made of calfskin uppers. Calfskin leather is also used in the production of fine handbags and small leather goods. Sheepskin leather is leather made from the skin of sheep. It is an extremely supple material which is easily manipulated in the production of fine leather shoes. Kidskin leather is leather made from the skin of young goat. It is not as supple as calfskin or sheepskin leather, nor is it as rigid and tough as cowhide leather.

Imports of calfskin leather in 1993 totaled \$13,335,724. Imports of sheepskin leather in 1993 totaled \$33,959,221. The dutiable imports of kidskin leather in 1993 totaled \$12,495,161. Please see Appendix A for a complete breakdown of calfskin, sheepskin, and kidskin leather import statistics for 1990 through 1993.

Leather is also distinguishable by the purpose for which it was tanned. Calfskin leather used to make fine leather shoes would be unsuitable for use in the manufacture of handbags and vice versa. Likewise, calfskin leather used for the production of leather garments is unsuitable for use in the manufacture of fine leather shoes, and vice versa.

#### IV. The Present State of the Leather Tanning Industry

The leather tanning and finishing industry, as defined by the Department of Commerce, consists of (1) establishments engaged in tanning, currying, and finishing raw or cured animal hides and skins into leather, as well as (2) dealers who buy hides, skins or leathers for processing under contract with tanners or finishers.¹ The leather tanning and finishing industry is a capital intensive industry, not a labor-intensive industry. The skins and hides used to produce leather are by-products of the meat-packing and dairy industries.

The tanning industry suffered a decline between 1982 and 1987. This decline may be attributed to the decline in the availability of skins and hides for tanning, increased global competition for untanned U.S. skins and hides, as well as increasing environmental regulation of the leather industry. The number of plants tanning leather during that period dropped from 342 to 308. In 1992, 110 tanning facilities remained in the United States.

The U.S. Department of Commerce statistics forecasted an increase in leather production in 1992. The Department of Commerce also forecasts additional increases in domestic leather production in 1993.² The U.S. Industrial Outlook 1993 characterizes the long-term outlook for the tanning and finishing industry to be good³, after approximately ten years of consolidation. Industry employment was estimated at 12,700 in 1992. This figure represents a six percent increase from 1991. Production employment was estimated at 10,800 in 1992. This figure also represents a 6 percent increase from 1991.⁴ It appears that the U.S. leather tanning industry will concentrate on producing leathers for use in the automotive and furniture markets.

#### V. U.S. Production of Calfskin, Kidskin, and Sheepskin Leathers

According to the Department of Commerce, the United States produces only a small amount of calfskins for tanning, most of

¹ U.S. Department of Commerce, U.S. Industrial Outlook 1993, 33-2. See Appendix B for text.

² Id., 33-1 - 33-2.

³ Id., 33-5.

⁴ Id., 33-2.

which are exported for sale.⁵ In 1992, the number of sheepskins produced domestically totaled approximately 5.8 million skins for tanning.⁶ Kidskin is no longer tanned in significant quantities in the United States due to the limited supplies of goat skins available for tanning.⁷

The last major calfskin tanner in the United States capable of supplying calfskin leather in commercial quantities to the domestic shoe manufacturers was A.F. Gallun & Sons of Milwaukee. Throughout the years, Florsheim was a loyal customer of A.F. Gallun & Sons. Although there may be other tanners in the United States capable of tanning calfskin, no other tanner offered calfskin leather suitable for use in the manufacture of fine leather footwear. Last spring, A.F. Gallun & Sons announced that it was closing its calfskin tanning operations. This closing left domestic shoe manufacturers and other users of calfskin leather completely reliant upon imports to supply their raw material requirements.

## VI. The U.S. Footwear Industry

The U.S. footwear industry is struggling. The industry suffers from a general decline in sales, as well as a serious downward trend in production, profits and employment opportunities. Over the past 24 years since 1968, the U.S. domestic shoe industry has been declining at a compound annual rate of 5.5 percent.⁸ Since 1987, the domestic nonrubber shoe manufacturing industry has suffered a sharp decline.

Because many of the manufacturing steps in the production of fine leather shoes require direct human involvement, the shoe manufacturing industry is highly labor intensive. The decline in the industry has had a profound impact on American shoe workers. Shoe plant closings have continued since 1987. These closings have had a devastating affect on U.S. shoe workers and the communities in which these plants are located. See Appendix C.

Total employment in the nonrubber shoe industry has declined to approximately 54,900 workers, this represents a 3.5 percent decline. The number of production shoe workers in the nonrubber shoe industry have decreased about 4.3 percent to only 46,600 workers. Florsheim itself has been forced to close factories during the past few years.

According to the Department of Commerce, the long-term outlook for the nonrubber footwear manufacturing industry is bleak. It is predicted that the U.S. domestic production of shoes will continue to decrease and amount of shoes manufactured abroad and imported into the United States will increase.⁹

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⁵ Id., 33-4.

⁶ Id., 33-4.

⁷ Id., 33-4.

⁸ Id., 33-6.

⁹ Id., 33-10.



## VII. Duty Elimination through the GATT Agreements Is Warranted

The GATT market access agreements offer the elimination of duties on calfskin, sheepskin, and kidskin leather, among other merchandise, which will decrease the cost of manufacturing shoes and other fine leather goods in the United States. This decrease in cost will aid the struggling U.S. shoe manufacturing industry, as well as other U.S. manufacturers of fine leather goods.

No U.S. industry will be negatively impacted by the elimination of duties on these articles of commerce because there is no substantial U.S. industry producing such materials domestically. The present duties on these imports serve only to increase domestic production costs for shoe manufacturers and thereby diminish their global competitiveness without benefitting any distinguishable U.S. industry.

By lowering the cost of producing shoes domestically, the elimination of duties on calfskin, sheepskin, and kidskin leathers will increase the viability of domestic shoe plants. Such an elimination of duties will have a significant and positive financial impact on shoe manufacturers, shoe workers, and the communities in which shoe factories are located. Such a result will surely be greeted enthusiastically by shoe workers throughout the country, especially in flood-ravaged Missouri. See Appendix C.

Consumers will also benefit from the elimination of duties. Relieved of the burden of paying duties on basic raw materials that are unavailable domestically, U.S. footwear manufacturers will be able to produce more footwear at an affordable cost to consumers. This cost differential will give consumers greater access to high-quality fine leather shoes at reasonable prices. In January 1993, Florsheim reduced prices on several of its best selling fine dress shoes. See Appendix D. The elimination of duties on the leathers used to make these shoes will enable Florsheim to further hold the line on prices or to decrease the prices of its shoes in the future.

The import duties assessed on calfskin, kidskin, and sheepskin leather are effectively penalizing a struggling U.S. leather shoe industry. The elimination of these duties through the successful implementation of the GATT agreements will help limit the future loss of U.S. shoe manufacturing jobs to workers overseas. These duties are no longer needed to serve the purpose of protecting an American industry, since substantial production of these products no longer exists in the United States.

## VIII. Conclusion

The elimination of duties on imports of calfskin, kidskin, and sheepskin leather will enable U.S. manufacturers to continue to produce fine leather goods in the United States. This duty elimination will be achieved by the implementation of the GATT agreements in general, and by the implementation of the GATT market access agreements in particular. In addition to the implementation of these agreements, we also strongly encourage the U.S. Congress to seek retroactivity for the duty eliminations embodied in the market access agreements. Such retroactivity would affect imports of these products since January 1, 1993, the date on which all prior U.S. duty suspension bills expired. The retroactivity of duty elimination will simply serve to accrue the financial and cost of production benefits to U.S. manufacturers sooner than the 1995 implementation date of the GATT agreements.

Such an elimination of duties will protect U.S. jobs and strengthen the global competitiveness of U.S. shoe manufacturers.

The elimination of these duties will not injure any existing U.S. industry as there are no U.S. tanners currently supplying these highly specialized goods in commercial quantities and users of these leathers are forced to import to fulfill their leather needs. Therefore, we strongly urge the United States government to take any and all appropriate steps necessary in the completion of the negotiations surrounding the General Agreement on Tariffs and Trade, in order to achieve an elimination of the duties assessed on calfskin, kidskin, and sheepskin leather.

Respectfully submitted,

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Dated: February 28, 1994

[Attachments have been retained in Committee files]

To the:  
 Subcommittee on Trade  
 Committee on Ways and Means  
 U. S. House of Representatives  
 February 16, 1994

THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS  
 AND ITS AFFECTS ON THE DOMESTIC APPAREL INDUSTRY AND  
 U. S. APPAREL JOBS

STATEMENT BY DR. HERMAN STAROBIN, RESEARCH DIRECTOR,  
 INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Thank you for the opportunity to submit this statement dealing with the Uruguay Round negotiations on behalf of the International Ladies' Garment Workers' Union and our 175,000 members. Our members live and work in more than two-thirds of our nation's fifty states and produce women's and children's apparel and related products.

My testimony concentrates on how the Agreement reached in Geneva December 15, 1993 threatens more than one million domestic apparel jobs and another million or more jobs in textiles and other supplying industries. Before doing so, however, I believe it would be helpful to your deliberations if I were to make some general comments on the negotiations. I was in Geneva during the final phase of the talks and as an industry advisor to our Government have followed the negotiating process closely.

To many of us, it seemed clear that our trade negotiators sought an agreement regardless of what they had to give to get one. They eased the positions the U. S. had taken in some areas, the most obvious and important being agriculture. Other position also deemed important to U. S. interests were dropped where agreement proved difficult in order to meet the December 15, 1993 fast track deadline. The biggest giveaway was in apparel and textiles where, despite an alleged quid pro quo, we received nothing in return as my testimony will show.

Among the most serious shortcomings of the Round was its failure to address worker rights and labor standards. The newly created World Trade Organization, which will replace the General Agreement on Tariffs and Trade (GATT), raises serious questions about the infringement of U. S. laws and our nation's sovereignty.

Suppression of worker and human rights by governments that seek the "comparative advantage" low wages and working standards is the most prevalent and cruelest subsidy in world trade. Expansion of trade will not improve living standards around the world unless ordinary working people have the right to share in economic growth and, in turn, broaden markets for goods and services in their countries. This is directly tied to the right of workers to associate freely, a circumstance all too rare in the developing world.

The Round should have contained provisions that governments that seek to enjoy the benefits of the world trading system must respect the rights of their own citizens. Yet, even proposals to study internationally-recognized workers rights, embodied in the conventions of the International Labor Organization, were not moved forward. The rights of the privileged few who benefit from trade were preserved, while the rights of those who labor to produce the goods were ignored. Production is the result of the efforts of both labor and management, not just one of them.

The WTO replaces the General Agreement on Tariffs and Trade and contains a binding dispute settlement mechanism. Actions against unfair, unreasonable or discriminatory trade and investment practices in dispute would require prior WTO authorization by an expert panel. Pending review by a permanent appeals panel, its decision would be binding. This



reflects a major change from the current procedures and has important implications for existing U. S. laws, especially the various forms of Section 301.

The Uruguay Round agreement differs from previous trade agreements in that the WTO addresses governmental actions that had previously been considered purely domestic. It may, in the view of some observers, inhibit existing domestic laws related to consumer and environmental protection and prevent strengthening of such laws. The expanded coverage by WTO could be used to severely limit remedies by the U. S. for practices not addressed by the Round, including worker rights and labor standards.

Before voting on the Agreement, this Committee should explore possible limitations on U. S. sovereignty as a result of WTO provisions as the Congressional Research Service did after a similar proposal was made in the Dunkel Report in 1991. It will be recalled that in 1947 the Congress rejected a proposal for an International Trade Organization on the grounds that it represented a threat to our nation's sovereignty.

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Apparel and textiles are complementary industries, but their roles in the manufacturing process differ. Apparel is an end product and textile fabric an intermediate good. One industry is labor-intensive and the other capital-intensive. Our trade negotiators sought to treat textile and apparel companies differently from their workforces and tried to play them off against each other. In our view, the Geneva accord on apparel and textiles failed to meet the needs of any of them, particularly apparel workers.

Any analysis of the trade policies in apparel must also distinguish between companies that produce domestically and those that import. Government agencies treat both as domestic producers, although one employs production workers in this country and the other does not. The Uruguay Round decisions on apparel were of minimal, if any, benefit to firms that produce here.

The Administration's efforts to win support for the Round from the textile and companies industries was intimately tied to the vote on the North American Free Trade Agreement. Although NAFTA means the movement of U. S. jobs to Mexico, the companies viewed the agreement as a business opportunity.

To secure votes for NAFTA from Textile Caucus members of this House, President Clinton made a series of promises in a letter to each of ten Caucus members on the eve of the NAFTA vote on matters that were of concern to the industries. None of these promises reflected the problems confronting apparel workers nor were the promises fulfilled in the accord reached by our negotiators.

In addition to promising to improve Customs' surveillance in apparel and textile trade with Mexico, the President said he would pursue "a very aggressive posture" toward China. This promise was in recognition that a phase-out of the Multifiber Arrangement and its quota system would greatly benefit China, the largest exporter of apparel and textiles to the U. S.

China has been a matter of concern to the domestic industries because as a non-market economy it can set prices that are not geared to costs. China is also the leading exporter of apparel and textile products to the U. S. and has the potential to raise its exports massively, especially after MFA controls end. China has also been transshipping 50 percent over its bilateral MFA agreement quotas, according to U. S. Customs.

China is not a member of the GATT and did not participate in the Uruguay Round. Its membership in the near future is expected to be supported by the U. S. and, when admitted, it would benefit from the Uruguay Round agreement on apparel and textiles outlined below. Because U. S. policy toward China appears to be in flux, the President's promise on China will be treated in detail in the latter part of my testimony.

The President's letter said that Trade Representative Mickey Kantor would "explore" a fifteen-year instead of the proposed ten-year phaseout of MFA in the Uruguay Round talks. This was aimed at giving the domestic industries more time to adjust. Caucus members were told that the President would work with the industries to ease the impact of tariff cuts.

Finally, the letter declared that "effective market access commitments" must be made by other GATT members in exchange for ending the MFA. This meant that the countries that exported apparel and textile products to the U. S. had to show that they were providing access to their markets. "Achievement of effective market access" was tied to removal of both tariff and non-tariff barriers by exporting countries. The four-page letter said that, "we are evaluating the options available to us should some countries fail to meet this obligation."

Whatever else their purpose may have been, the commitments made in the letter did not address the needs of U. S. apparel workers.

The promise to explore a fifteen-year phaseout of MFA was never strongly pushed by the Geneva trade negotiators. But viewing the problem from the outset in terms of years begged the issue. The extent to which the domestic industry could be helped to "adjust" depended more on the pace at which quotas would be ended than on the time frame. But this was not addressed. Although quotas could be effectively eliminated in a few short years, fifteen years remained the industry's clarion call.

The decision of the U. S. government to phaseout MFA reflected the abandonment of a policy that went back to President Kennedy's years when apparel and textiles were recognized as import sensitive and deserving of special restraints. Policies that were put into effect in 1961 led to the creation of the MFA in 1974 and its continuation up to the present. The big U. S. push to end MFA began during the Bush Administration. The import sensitivity of apparel and textiles had not changed. Policy had.

The promise to work with the industry to ease the impact of tariff cuts was fulfilled to the extent that the Bush proposals to cut all tariff peaks was withdrawn. But the threat of additional tariff cuts remains. They can take place between now and when the implementing legislation is submitted to the Congress. At least one high-level official is reported to have said that active industry opposition to the Agreement could lead to further tariff cuts.

The most important promise in the view of the industries was reciprocal market opening. At first blush, it sounds good. But it should be apparent that, with very few exceptions, apparel exporting countries do not have and may not have for years a sufficiently developed middle class or wage levels high enough to permit purchases of reasonable quantities of U. S.-made apparel.

Tariff and non-tariff barriers are not the only or even the most important impediments to U. S. apparel exports to the markets of apparel exporting countries. I have stressed earlier the need for ordinary workers in developing countries, those living in all-pervasive poverty, to share in economic progress and broaden their country's markets. Only this kind of development would make reciprocal market opening meaningful.

The failure of our negotiators to insist that the Round address the social side of trade makes a mockery of the pretensions about reciprocal market openings. This failure, coupled with pressures to be competitive in world apparel trade, will increase the movement to harmonize labor and environmental standards downward in all countries, including our own.

Given the capital-intensive nature of the textile industry worldwide, removal of trade barriers may permit U. S. fabric makers to compete with Asian fabric producers in Asian apparel manufacture for export. But, given the huge wage differential between Asian and U. S. workers in labor-intensive apparel manufacturing, removal of trade barriers will not make Asia a significant market for U. S.-made apparel.

In a sense, the reciprocal market opening policy pursued by U. S. negotiators is reminiscent of a concept advanced by the textile industry a dozen years ago. At that time, with the possible exception of Japan, Asian textile manufacturers were far from being competitive with U. S. producers. The U. S. textile industry concept was to sell U. S. fabric to Asian apparel producing countries. When the finished apparel was exported to the U. S., duty would be paid only on the added value of low cost Asian labor. The proposal was withdrawn after severe opposition from the apparel industry and the unions.

Today's circumstances are very different, given the large scale expansion of capital-intensive textile production capacity in a number of Asian countries, including China, Korea and Taiwan. Yet, this variant of 807-type outward processing has publicly attracted at least one Asian apparel exporting country.

According to the Journal of Commerce (January 19, 1994), Sri Lanka is looking to increase its share of the U. S. market by substituting U. S. for Asian fabric in order to make "higher quality" apparel. If this concept grows, it might help fabric sales in the same way as NAFTA and the Caribbean Basin Initiative, but it would negatively impact U. S. apparel jobs.

Removal of tariff and non-tariff barriers may be necessary to a definition of market access, but by itself it is not sufficient to provide effective opening of third world markets to U. S. apparel. Further, neither the letter to the Textile Caucus nor our trade negotiators detailed how market opening would be measured. Could a country declare its markets open, but because of low incomes very little U. S. apparel would be purchased? Would that be an acceptable example of market opening?

As the agreement shows, U. S. negotiators in Geneva gave away the domestic apparel and textile industries. They tried to make believe that they were helping the domestic textile industry, but no such effort was made with respect to apparel. Given their highly touted agenda, the only "gains" our negotiators can point to in the seven-year Uruguay Round talks is phasing out apparel and textile quotas and ending the MFA.

The final agreement calls for phasing out the MFA in ten years, cutting and binding tariffs at specified levels and eliminating non-tariff barriers and establishing no new ones. Once the Agreement goes into effect, but before the first stage of the three-stage elimination of quotas begins, 16 percent of quotas then in force are to be eliminated.

At the beginning of each stage, the U. S. government will select a series of specific products that accounted for between 17 and 20 percent of total imports of apparel and textiles in the base year 1990. By the time the third stage starts, between 50 and 60 percent of trade in the base period will no longer be under control. At the end of the third stage, ten years after the agreement goes into effect, there will no longer be any quotas and MFA will cease to exist.

At the same time that quotas are being eliminated, growth rates on still-existing quotas will be increased. Known as "growth on growth", these increases are over and above increases provided for in the bilateral agreements. At the end of the third stage, there will be unlimited entry into the U. S. of all apparel and textile products.

The progressive elimination of quotas by the U. S., as stated, begins immediately after the agreement is ratified and increases rapidly from the first year on. However, exporting countries have up to ten years to cut their tariffs and end non-tariff barriers. Lesser developed countries have even more leeway. The presumed quid pro quo for ending U. S. quotas -- tariff cuts and elimination of non-tariff barriers by exporting countries -- does not begin until MFA is gone and the domestic U. S. market is wide open to unlimited imports.

I have saved my comments on the promise of "a very aggressive posture" on China for last because of the growing indications that our government's China policy seems to be in the process of undergoing a major change. This apparent change requires a brief review of



recent developments involving both apparel and textiles and other aspects of our relationship with that country.

The bilateral apparel/textile agreement between the U. S. and the People's Republic of China expired December 31, 1993. The U. S. had been pressing China to accept a clause in a renewed agreement that would prohibit transshipments by China and provide for penalties if they continued. According to U. S. Customs, China shipped almost \$7 billion in apparel and textiles to the U. S., although under the bilateral agreement it was permitted to ship only \$4.8 billion. The \$2 billion plus difference constituted transshipments through other countries. In five negotiating sessions, China did not engage in serious negotiations.

With no bilateral in place at the beginning of 1994 and China's ongoing refusal to negotiate fraud language, Trade Representative Kantor announced on January 6 that the U. S. would cut back China's apparel and textile quotas effective January 17. They would be reduced, he said, 35 percent in the most sensitive products and 25 percent in other categories. Kantor said that \$1 billion in China's exports to the U. S. were involved.

The transshipment clause proposed by the U. S. provided that repeated transshipments would result in penalties of as much as three times the value of the violation. China was also asked to permit U. S. Customs to inspect Chinese factories. If China agreed to the fraud clause, the U. S. was prepared to negotiate some quota increases.

Despite the drama of Ambassador Kantor's announcement of quota cutbacks, his statement was clearly part of the negotiating process and a public relations move. However, Kantor's strictures would not have bitten for months to come, certainly not on January 17 as reported in the press. Only when shipments in a given category reached 65 percent or 75 percent, most likely in six or seven months after they were announced, would they become effective.

Negotiations on apparel and textiles took place in Beijing on January 15-17 and, to the surprise of few observers, a three-year agreement was reached. While the agreement includes a no-transshipment clause, China was not penalized for transshipments except to the extent that there will be no quota growth in all but two categories in the first year. With some exceptions, growth in the next two years will average roughly 1.0 percent, the same as the other major exporters -- Hong Kong, Korea and Taiwan.

Despite China's acceptance of the no transshipment clause, it is doubtful that the central government can control transshipments, given the extent of the country's decentralization. These doubts are widespread among diplomats in Beijing and industry and union people with whom I have spoken in Hong Kong.

Resolution of differences over apparel and textiles between the U. S. and China raises some questions about the "aggressive posture" promised by the President. If the U. S. was in such a strong position, why did Ambassador Kantor rush a delegation to Beijing even as he was announcing a strong U. S. stand in Washington. And why negotiate in Beijing and not in Washington? After all, it was the U. S. market that was being negotiated.

One answer may be sought in what appears to be the makings of a change in our country's policy on China. Since early this year, many very high level U. S. officials have visited China. The policy that relations with China, including renewal of Most Favored Nation treatment for that country, are tied together is being publicly questioned by at least one major key advisor of the President. We have also witnessed the argument that for strategic reasons -- including China's ties with North Korea -- we should establish closer relations with China.

A change in U. S. policy on China in which trade and human rights are no longer tied together has been publicly advanced on at least two occasions by Robert Rubin, head of the National Economic Council and one of the President's closest advisors. China, with whom the U. S. had an unfavorable trade balance of \$23 billion in 1993, is now being viewed as an important and growing market for U. S. exports.

In order to increase exports to China, it is argued, U. S. businessmen must be assured that our trade relations with China are on firm ground and not subject to review every year. If a change in U. S. policy takes place, it would not be surprising to see the U. S. grant Most Favored Nation treatment to China on a permanent basis when it comes up for renewal in June rather than depend on an annual appraisal of the status of human rights.

Creation of fulltime jobs has become one of the major problems confronting our economy. A policy aimed at increasing exports to China, the new stress on exports and the Administration's pressure to complete NAFTA and the Uruguay Round may signify a conclusion that exports are the answer to job creation. The same thinking may be part of the decision to open trade relations with Vietnam. Whether this policy will help create sufficient numbers of jobs in the U. S. remains to be seen.

If this is the new turn in U. S. trade policy – and even if it is not – the Administration must insist in all international trade parleys that living standards in the third world must be raised. This is the only way for their markets to grow.

A change in policy towards China may bring into question the promise of "a very aggressive posture" toward that country in the apparel/textile area. If a change is in process, it would not be surprising, for example, to see the U. S. push for China's membership in the new WTO and with it all the privileges of the Uruguay Round. Ambassador Kantor did not negotiate with China on apparel and textiles independently of other policy needs.

The Uruguay Round negotiations on apparel and textiles and the agreement with China show, if it is still necessary to make the point, that apparel and textiles are still being used to secure needs other than those of the workers in these domestic industries.

We believe and we have so testified before this Subcommittee and elsewhere on many occasions that apparel and textile are perhaps the most import-sensitive industries in our nation. The workers in this industry, best described as economic third world workers, need the attention of the Congress. Their jobs and their industry are being given away and no alternative job opportunities are being created for them.

This Committee should address the problem of apparel workers before it sends the Uruguay Round implementing legislation to the House. It should reject the elimination of the MFA or at least propose legislation that would provide for controls on the import-sensitive apparel industry. At the very least, it should insist on specific Trade Adjustment Assistance for apparel workers who lose their jobs as a result of trade policy.

[BY PERMISSION OF THE CHAIRMAN]

A CARIBBEAN PERSPECTIVE ON  
THE URUGUAY ROUND OF THE  
GENERAL AGREEMENTS ON TARIFFS AND TRADE (GATT)

By Dr. Richard L. Bernal*

Submitted to the  
House Ways and Means Trade Subcommittee

February 28, 1994

Thank you for providing this opportunity to submit testimony on the impact on the Caribbean of the recently concluded Uruguay Round of the General Agreement on Tariffs and Trade (GATT). The Caribbean perspective on the GATT is important, not only to understanding the GATT's impact on an important trading partner of the United States, but also to discerning the full effect of the GATT on the trade-propelled economy of the United States.

Last December, the world took another step forward in the establishment of a more liberalised trade regime. Although less ambitious than originally planned, the Uruguay Round accords will lower many trade barriers and strengthen the disciplines governing many sectors. Ultimately, the agreement seeks to stimulate worldwide economic growth through increased trading opportunities.

I. Jamaica's Commitment to Trade Liberalisation

Jamaica is convinced that an open multilateral trading system is a stimulant to economic growth, both through the static gains from increased efficiency in the utilisation of its existing resources and the dynamic gains from the opportunities to expand productive capacity through new technology, investment, and innovative entrepreneurship.

Jamaica is fully committed to trade liberalisation within the hemisphere and to a multilateral trading system that approaches free trade as far as possible. Jamaica subscribes to, and its policy has always been fully consistent with, the principles and disciplines of the GATT. Jamaica joined the GATT in the early 1960's and has been an active participant in, and has contributed to, successive negotiating rounds aimed at further liberalisation of global trade.

Moreover, Jamaica actively participates in several regional trade-liberalisation arrangements with the United States (the Caribbean Basin Initiative -- CBI), Europe (the LOME Convention), Canada (CARIBCAN), and the other English speaking countries in the Caribbean (the Caribbean Common Market - CARICOM). All of these arrangements are intended to promote trade between the member countries.

Finally, Jamaica also has supported the creation of free trade within the Western Hemisphere through the North American Free Trade Area (NAFTA), which constitutes the first building block of free trade within the hemisphere.

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## II. Trade Liberalisation as a Key to Economic Growth

Jamaica realises that there is now a new phase of globalisation of production and finance which is rapidly sweeping away national barriers to the movement of goods, services, capital, and finance. The speed at which these flows move throughout the global economy requires a rapidity of decision-making which cannot be sustained if there are national impediments. This is the fundamental economic impetus behind the dismantling of national barriers (e.g. tariffs, quotas, exchange controls) and the movement of regional groups within which there is a free market for capital and goods.

During the 1980's, Jamaica's economic policies focused on economic reform, stabilisation, and structural adjustment in an attempt to create an environment conducive to a private sector-led, market-driven, outward-looking growth strategy. An important aspect has been a comprehensive programme of trade liberalisation involving substantially reduced tariffs and the elimination of quantitative trade restrictions. This has been complemented by freeing market forces within the domestic economy through the abolition of price controls by a vigorously implemented campaign of privatisation and fiscal and monetary discipline.

In the last four years there has been a substantial acceleration in the process of liberalising the trade regime of Jamaica, with an emphasis on the removal of import restrictions and the lowering of tariffs. This commitment to outward-looking trade and development policies is firmly based on the knowledge that the benefits to be derived are those of higher growth rates and enhanced capacity to adjust to external shocks. Expanding trade contributes to growth by enabling the economy to improve its productivity by specialising in exports in which it has a comparative advantage. Production for the world market allows firms to achieve the economies of scale which are precluded by a small domestic market. Exposure to competition from imports serves to improve cost efficiency and benefits consumers by lower prices.

## III. The U.S./Caribbean Economic Partnership

Stimulated primarily through regional textile and apparel trade, the United States and the Caribbean Basin nations have developed an important economic partnership. The U.S. Department of Commerce recently reported that total U.S. apparel exports, about two-thirds of which are assembled in the Caribbean Basin from U.S. manufactured and cut cloth, have expanded by close to 80 percent since 1990. From 1989 to 1992, U.S. textile and apparel exports to the Caribbean increased by 63 percent.

These successes are reflected in other industries as well. Since the mid-1980's, U.S. overall exports to the Caribbean have expanded by over 100 percent and Caribbean exports to the United States have climbed by roughly 50 percent. The Caribbean Basin now comprises the tenth largest market for the United States, and is one of the few regions where the United States consistently posts a trade surplus. With combined trade exceeding \$22.5 billion in 1993, U.S./Caribbean commercial links support close to 250,000 jobs in the United States and countless more throughout the Caribbean and Central America.

The new structure of trade means that economic growth and development in the Caribbean now directly translate into expanded export opportunities for the United States. Roughly 60 cents of each dollar Jamaica earns from exports to your country is spent in the United States buying American-made consumer goods, food products, industry inputs, and capital equipment. When compared with each dollar of Asian imports, which only generates about 10 cents worth of subsequent U.S. purchases, trade with the Caribbean becomes an important priority for the United States.

As Congress considers and adopts legislation to implement the GATT accords, it also should explore ways to simultaneously preserve the strong production interdependency that exists between U.S. and Caribbean workers. Without such a mechanism, GATT's implementation potentially will create a long term, and unnecessary, trade-off between "free trade" and sustained regional economic growth.

#### IV. GATT Treatment of Textiles and Apparel

The textile provisions of the draft GATT accord is likely to undermine economic growth in the Caribbean Basin. Over the next decade, the GATT textile agreement will phase out the worldwide quota regime governing textiles and apparel trade, known as the Multifibre Arrangement (MFA).

The accelerated phase-out of the MFA will dismantle a mechanism that has been instrumental in fostering trade-based economic growth throughout the world, and particularly in small countries such as Jamaica. Without the MFA framework, the garment exports of very low wage countries that subsidise their production will be permitted to compete with those of countries that maintain acceptable working conditions and workers' rights. Such unfair competition will be detrimental to U.S. and Caribbean producers. Low wage exports will undersell Caribbean products and result in reduced production, trade, and investment.

The textile industry has proved an important stimulus for economic growth and job creation throughout the Caribbean and in the United States. As the U.S. apparel industry has sought to retain its national and worldwide competitive advantages, especially in the face of low cost imports from Asia, it has established strategic production alliances with factories based in Jamaica and other countries throughout the Caribbean. U.S. apparel makers have been able to preserve high skilled U.S. jobs by combining U.S. capital and technology with Caribbean assembly skills to produce garments from U.S. textiles. It is this complementary production that enables U.S. firms to remain competitive in the global marketplace.

#### V. U.S./Caribbean Textile and Apparel Complementarity

In many countries, and especially throughout the Caribbean and Central America, the development of the textile and apparel sector has been the gateway to industrialisation and sustained economic growth. Because it is labour intensive and relatively easy to start production, the garment industry acts as a magnet for investment capital and an employment catalyst in many parts of the world. Ultimately, the textile and apparel industry can set countries on the path of private sector-led development, breaking their long-term dependency on foreign aid.

For these reasons, Jamaica views this sector as integral to the viability of its long-term development objectives. Currently, one in four Jamaicans is employed by the textile and apparel industry, making it the single largest employer in the country. It is also one of the largest foreign exchange earners, acting as the engine of export growth and generating close to \$400 million in foreign exchange annually.

Much of our success in this area has been based upon our linkages to the United States textile and apparel sector. During the past decade, the U.S. and Caribbean Basin textile and apparel industries have become increasingly linked in complementary production and assembly operations. U.S. firms combine their capital and technology with Caribbean low-cost assembly operations to generate employment opportunities in both our countries while producing garments that are competitive in both the international

and domestic markets. Roughly 80 percent of the cost of a finished garment assembled in Jamaica consists of U.S. labour, fabric, or other inputs. Because so many of Jamaica's inputs originate in the United States, the Jamaican garment industry has emerged as an important catalyst for U.S. employment.

Through this sector, Jamaica has been able to diversify its export portfolio to reduce its dependency on mining and tourism. By creating employment opportunities, Jamaica has been able to provide legitimate alternatives to destabilising activities such as drug trafficking. The development of an industrial workforce has taken place in a context of strong labour and environmental codes. Increased reliance on international trade links has reinforced the liberalisation of Jamaica's own import and foreign exchange regimes.

Given this context, the short time-frame provided for the phase-out of the MFA concerns the Government of Jamaica. Jamaica has developed its textile and apparel industry under the aegis of the MFA, which guarantees fair access to the U.S. market and establishes a safeguard against a flood of imports into the U.S. market from low-cost, and often subsidised, suppliers in Asia. As the MFA is dismantled, this safeguard will be eliminated and Jamaica's exports could dwindle amid a surge in imports from those Asian producers. Such unfair import penetration would devastate both U.S. and Jamaican garment industries, thus undermining a key engine of economic growth in the region.

As part of the GATT negotiations, Jamaica had long advocated a slower phase-out period -- perhaps over 15 years -- to provide more time for developing countries to prepare for increased competition. A longer transition period also would guarantee that improved market access in the United States would benefit those countries that had made long term commitments to liberalise their own markets. Furthermore, the textile trade might have been brought into the GATT framework without sacrificing the economic development of the most vulnerable countries.

## **VI. Parity as an Application of GATT Principles**

It is imperative, therefore, to identify trade liberalising measures in addition to the framework that will eliminate the MFA over the next decade, which will re-level the playing field and preserve the U.S./Caribbean competitive partnership.

### **A. Caribbean Parity Framework**

One mechanism, which was discussed during last year's Congressional debate on the North American Free Trade Agreement (NAFTA), would link certain Caribbean Basin countries to the trade measures established between the United States and Mexico. Two such legislative proposals were introduced last year by Congressman Sam Gibbons and Senator Bob Graham. Their bills, (HR 1403 and S. 1155, respectively), which provide a good framework for the parity dialogue were ultimately endorsed by roughly 70 other lawmakers.

By extending parity with NAFTA to the Caribbean Basin countries, the United States could take a decisive step towards trade liberalisation while offsetting the market displacement effects of the phased-out MFA. Reducing tariffs on Caribbean-assembled garments, which use U.S. components and inputs, would re-establish a price competitiveness with low-cost suppliers from other parts of the world.

Moreover, Caribbean parity would ease an unintended side effect of the NAFTA, which, without correction, threatens to turn the CBI into a "depreciated asset." Because of the quota and tariff reductions that NAFTA affords Mexico, combined with Mexico's



access to inexpensive labour, cheap energy and transportation, and economies of scale, the Caribbean countries are now trading at a competitive disadvantage in terms of access to the U.S. market. As investors and traders begin to demand of Caribbean countries the "Mexican discount" in order to make their Caribbean businesses competitive with similar operations in Mexico, this disadvantage will lead to investment and trade diversion, a relocation of productive capacity, job losses, and an eventual loss of economic confidence.

One of the best examples of this potential for displacement is in the area of textiles. Under NAFTA, Mexican textiles and apparel will benefit from a progressive tariff reduction over a ten-year period. This introduces a new dimension of competition, creating a situation whereby CBI-produced garments made from U.S. textiles will have to compete at a price disadvantage against Mexican apparel made from Mexican textile. This will displace both CBI apparel producers and U.S. textile manufacturers.

#### B. Jamaica's Reciprocity Commitments Under Parity

Jamaica has long viewed its relationship with the United States under the Caribbean Basin Initiative (CBI) as one of mutual commitment and obligation. In the context of Caribbean parity, which would guarantee non-discriminatory market access to the United States, Jamaica understands the importance of measures to assure "reciprocity" of trade benefits. Although reciprocity may not reflect strict equivalence in tariff reduction or elimination of quantitative restrictions, it should encompass the range of bilateral commercial issues, namely measures to protect trade in goods and services, investment, and intellectual property rights.

In that regard, Jamaica signed a Tax Information Exchange Agreement (TIEA) with the United States in the mid-1980's to facilitate U.S. efforts to combat illegal tax activities. Jamaica was also the first Caribbean country to establish an Environmental Framework Agreement with the United States to channel U.S. bilateral debt to support environmental programmes. More recently, Jamaica and the United States have concluded an Intellectual Property Rights (IPR) agreement, a Bilateral Investment Treaty (BIT), and an agreement to prevent illegal textile transshipment.

### VII. Conclusion

As Congress debates the passage of the GATT, serious attention should be directed at the adverse implications of the proposed phase-out of the MFA on the U.S./Caribbean textile and apparel industry. A phase-out mechanism that provides a transition period that is too short to facilitate an orderly adjustment process could have detrimental effects as it will expose firms to unfair, subsidised, cheap-labour imports. Such a hasty phase-out will, in fact, defeat the very objectives of GATT in providing for fair competition on a level playing field. Appropriate mechanisms can still be developed to allow for a suitable period of adjustment. In this way, Caribbean economies and the U.S. industries dependent upon healthy U.S./Caribbean trade links, can engage in an adjustment process that is insulated from unfair competition.

A fifteen-year phase-out of the MFA and the provision of NAFTA parity for Caribbean countries is a logical complement to the principles of GATT and would facilitate the achievement of more liberalised global trade and promote economic growth.

Table 1

**U.S./Jamaican Trade Statistics (1985 - 1993)**  
**(Millions of U.S. Dollars)**

Year	U.S. Imports	U.S. Exports	Annual Export Growth	Trade Balance
1985	267	404	--	137
1986	298	457	13.1%	159
1987	394	601	31.5%	207
1988	441	762	26.8%	321
1989	527	1006	32.0%	479
1990	564	943	-6.3%	379
1991	576	963	2.1%	387
1992	599	938	-2.6%	339
1993	720	1113	18.7%	393

Average Annual U.S. Export Growth: 14.4%

Note: U.S. trade surplus in 1993 is three times the level of the 1985 U.S. trade surplus.

Source: U.S. Department of Commerce  
U.S. International Trade Commission

Table 2

**U.S./CBI Trade Statistics (1985 - 1993)**  
**(Millions of U.S. Dollars)**

Year	U.S. Imports	U.S. Exports	Annual Export Growth	Trade Balance
1985	6687	5942	--	-745
1986	6065	6362	7.1%	297
1987	6039	6906	8.6%	867
1988	6061	7690	11.4%	1629
1989	6637	8290	7.8%	1653
1990	7525	9569	15.4%	2044
1991	8372	10013	4.6%	1641
1992	9559	11075	10.6%	1516
1993	10252	12278	10.9%	2026

Average Annual U.S. Export Growth: 9.5%

Note: 1993 marked the 8th straight year of U.S. trade surpluses

Source: U.S. Department of Commerce  
U.S. International Trade Commission

Table 3

**Number of U.S. Workers Dependent on  
Trade with the Caribbean Basin Nations**

Year	Total Number of U.S. Workers*	Number of New U.S. Jobs Created Per Year
1985	118,840	--
1986	127,240	8,400
1987	138,120	10,880
1988	153,800	15,680
1989	165,800	12,000
1990	191,380	25,580
1991	200,260	8,880
1992	221,500	21,240
1993	245,560	24,060

Average Annual Job Creation: 15,840

Source: U.S. Department of Commerce  
U.S. International Trade Commission

* Using the figure that \$1 billion in exports  
creates 20,000 U.S. trade-related jobs.



Submission for the Record  
of  
Steven R. Appleton  
representing  
MICRON SEMICONDUCTOR, INC.  
Boise, Idaho  
February 3, 1994

Micron Semiconductor, Inc., is grateful to have the opportunity to submit testimony to the Subcommittee on Trade at this hearing on U.S. GATT legislation. Micron Semiconductor, Inc., based in Boise, Idaho, manufactures and markets DRAMS, fast SRAMs, and other semiconductor products. Our company, which began 15 years ago in the basement of a dentist office, now employs 5000 people and occupies facilities covering 1.2 million square feet.

Micron has long recognized the importance of free and fair trade in the semiconductor industry. Because our customers come from all corners of the globe, we understand how vital it is to have access to foreign markets. Our competition, however, is also global in nature, and from our inception we have competed in an international arena. Therefore we also understand the importance of fair trade practices which allow companies to compete on their merits without government subsidies and support.

As the Uruguay Round of the General Agreement on Tariffs and Trade drew to a close in December, our company had three major concerns with the draft text of the trade agreement. Specifically, Micron sought 1) the elimination of tariffs on semiconductors, particularly the 14 percent EC tariff on semiconductors and the 9 percent Korean tariff on semiconductors; 2) a strengthening, or at a minimum no weakening, of international disciplines against dumping; and 3) effective protection of intellectual property rights.

With the completion of the Uruguay Round negotiations, Micron is grateful for the successful efforts of the Administration and Members of Congress to amend several provisions in the preliminary GATT proposal which would have proved disastrous to our industry's continued success and viability. However, Micron's management believes that more work on GATT remains to be done. The final agreement in Geneva left our intellectual property laws intact, but it weakened our anti-dumping laws which we have relied upon in the past to protect us from injurious pricing by foreign competitors. Strong implementation legislation needs to rebalance the overall GATT impact on our anti-dumping laws. Finally, the European Union grudgingly reduced its high tariff on DRAMs, our primary product, by only half (from 14% to 7%), and these cuts will only take effect five years after GATT implementation, i.e. not until the year 2000. It is also unclear what the Korean government's final commitment is on reducing their 9% tariff.

### THE GATT ANTI-DUMPING CODE

Maintaining effective remedies against dumping was the single most important objective of the U.S. semiconductor industry in the round of GATT negotiations that just ended. The U.S. industry was devastated by Japanese dumping in the mid-1980's. Japanese dumping of DRAMS forced 6 out of 8 U.S. DRAM manufacturers out of the market. Micron was one of the two fortunate enough to survive. The harmful pattern continues: this year, the Department of Commerce and the International Trade Commission determined that Korean semiconductor companies were dumping DRAM memory chips in the U.S. and imposed duties to offset this practice.

The United States semiconductor industry cannot survive in an international environment in which dumping and predatory pricing are allowed. Japanese and Korean electronics companies have a greater ability to sustain losses in their semiconductor operations. The United States government has determined that these companies have dumped other electronics products (including telephones, EPROMs, color picture tubes, televisions, 3.5" microdisks, and digital readout systems). For these reasons, there is a critical need for strong disciplines against dumping.

The final GATT text corrected several of the provisions in earlier drafts which would have severely impaired the ability of U.S. companies to defend themselves against injurious dumping. On balance, however, the GATT accord agreed to in Geneva left our anti-dumping laws substantially weaker overall. Moreover, negotiations did not address one issue of critical importance to the U.S. semiconductor industry--the issue of start-up costs. Under current U.S. anti-dumping law, particularly in semiconductor dumping cases, fair market value is often based on the cost of production in the foreign country. In other words, the anti-dumping law properly prevents foreign companies from selling below their cost of production in the United States. As drafted, the GATT accord will exclude start-up costs in determining whether a particular company is selling its product below cost. Since start-up costs are substantial and must be recovered in order for a company to remain profitable, we strongly believe they should be considered in anti-dumping cases. We would, therefore, urge Congress to adopt a provision which limits the start-up period to the time before the product is sold in commercial quantities. This provision would limit the

extent to which foreign companies can circumvent our anti-dumping laws by excluding their R&D and start-up costs.

Other key areas which must be addressed in implementing legislation include standing (not making it more difficult to begin cases); cost of production (not changing the cost test, insofar as possible in the new law); profit calculations (ensuring that an appropriate profit is attributable to imports--the profit figure cannot be zero, because that is not a figure derived in the ordinary course of trade); and averaging (ensuring that U.S. prices are not averaged when there is targeting). The overall goal must be to make sure that the trade laws, and the dumping law in particular, are as strong as they can be consistent with the GATT.

### TRADE-RELATED INTELLECTUAL PROPERTY

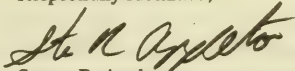
Micron supports the efforts of the Administration to strengthen the global protection of intellectual property rights. These negotiations are important to the U.S. semiconductor industry, given the R&D-intensive nature of the industry. We were pleased that the final GATT text agreed to in Geneva limited compulsory foreign licensing to non-commercial use and to cases where the courts have found evidence of anti-competitive practices.

### CONCLUSION

Access to global markets is a matter of survival for the U.S. semiconductor industry. For that reason, Micron has always supported policies designed to strengthen and expand the international trading system.

We greatly appreciate the efforts of the Administration and Members of Congress to improve the outcome of GATT for our industry and specifically for Micron. We are anxious to work with you to adopt language in the U.S. GATT legislation which further upholds the integrity of our free trade laws. With your help, we will succeed in creating a level playing field for U.S. companies in this vital industry.

Respectfully submitted,



Steven R. Appleton  
Chairman, CEO, President  
Micron Semiconductor, Inc.

**STATEMENT OF VERONICA A. HAGGART  
CORPORATE VICE PRESIDENT AND DIRECTOR, GOVERNMENT RELATIONS  
MOTOROLA INC.**

**THE IMPORTANCE OF U.S. TRADE LAWS TO MOTOROLA'S SUCCESS**

**SUMMARY**

These comments are submitted on behalf of Motorola, Inc., one of the world's leading providers of wireless communications and electronics equipment, systems, components and services for worldwide markets. Motorola must compete every day against strong international competitors around the globe. Over the years, our company has had to rely on the laws used by the United States to open foreign markets and to prevent unfair foreign trade practices and competitive abuses. Motorola is concerned that the agreements recently reached in the Uruguay Round of Multilateral Trade Negotiations may reduce the effectiveness of these laws unless the Congress is vigilant in preventing this result. While Motorola hopes that certain new GATT measures will help curb unfair trade practices around the world and ensure that global competition is free of abuses and obstacles, we feel it is imperative that the United States not abandon its own tools for preventing dumping and responding to other unfair foreign trade practices. The implementing legislation to be considered by the Congress must therefore contain provisions to ensure that these laws remain effective and accessible.

**INTRODUCTION**

Motorola is an American high-technology electronics company whose products include two-way radios, pagers, personal communications systems, cellular telephones and systems, discrete semiconductors and integrated circuits, defense and aerospace electronics, automotive and industrial electronics, computers, data communications and information processing and handling equipment.

Motorola has some of the most successful electronics products in the world today. Our "flip-phone" compact cellular telephones have made us the world's leader in this important technology. Similarly, in the area of radio pagers, Motorola--with its messaging pager, its pen-sized pager, and its products for interactive data communications networks--leads the world in terms of technology. Motorola also continues to be at the forefront of semiconductor development worldwide. And Motorola is poised to lead in the next generation of electronics products that will again revolutionize communications and electronic technology. Motorola has achieved its leadership position through an emphasis on innovation and the highest possible quality, acknowledged in its receipt of the first Malcolm Baldrige National Quality Award. Yet, were it not for the ability of the United States to address unfair foreign trade practices, Motorola would be unable to compete fully in many markets.

The first and most important of these markets is the United States. If the U.S. had not been able to stop the unfair dumping of foreign imports of pagers, cellular phones and certain memory semiconductors in the United States, Motorola might not be in its world leadership position today. Motorola has relied on the antidumping law sparingly and only where the dumping of Japanese produced electronic products in the United States was so severe (often at prices that were only half the previous prevailing world price) that it threatened to destroy the U.S. industry. (The average dumping margins found were 79% in pagers, 58% in cellular phones and 30% in memory chips.) In each case, the antidumping law was essential to counteract a predatory effort by Japanese producers, who enjoyed the protection of a largely closed home market, to drive U.S. industry out of its own home market by dumping excess-capacity products at unfairly low prices here.



Of course Motorola does not compete only in the U.S. market. In fact, Motorola is a major exporter, with more than half of our products sold in foreign markets. While Motorola manufactures products that compete successfully around the world, we have been forced in some instances to seek the application of U.S. trade laws to eliminate unfair barriers to competition in foreign markets. For example, the U.S. Government's use of Section 301 of the Trade Act of 1974, as amended, and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 have been essential in gaining access to the Japanese market for the same Motorola products -- pagers, cellular telephones and semiconductors -- that the Japanese sought to dump in the U.S. market. The ability to utilize market access tools such as Section 301 has materially increased Motorola's access to several foreign markets and has enabled us to attack numerous unfair foreign trade practices which, left unaddressed, would decrease Motorola's competitive strength in world markets.

Motorola's ongoing effort to gain competitive market access in Japan's cellular phone market is a good example. Only with the leverage afforded by the threat of using Section 301 was the United States able to open up some regions of the Japan to Motorola in the past. And, as the current situation demonstrates, now it appears that further threats of unilateral U.S. action may be the only way to win meaningful access to the remaining portions of the Japanese market, including the lucrative Tokyo-Nagoya corridor.

In the high technology electronics industries in which Motorola competes, the revenues generated and experience gained from today's generation of electronic products are essential for the massive R&D effort necessary to produce tomorrow's products. Therefore the loss of substantial sales to predatory dumping in the U.S. or to closed foreign markets abroad today would severely damage Motorola's ability to compete tomorrow. In making its investments, Motorola must have confidence that efforts by foreign producers to steal U.S. market share through discriminatorily low prices or to lock Motorola's products out of foreign markets will not be tolerated.

For this reason, we are concerned by the possibility that the Uruguay Round agreements may weaken key U.S. trade laws. We urge the Congress in its consideration of legislation implementing these agreements to ensure that this does not occur. Motorola's concerns about the Uruguay Round agreements can be grouped into four areas: Antidumping; Section 301; Dispute Resolution; and Intellectual Property Protection.

## ANTIDUMPING

Motorola is concerned that America's ability to prevent predatory dumping may be eroded unless the legislation implementing the Uruguay Round ensures that America retains effective antidumping laws. Without such laws, it would have been difficult to stop the predatory Japanese dumping that threatened to destroy Motorola's businesses during the 1980's. A weakening of U.S. antidumping laws could encourage renewed dumping in the future, with serious adverse consequences for Motorola and other American producers. Among the areas in which implementing legislation must be drafted in order to ensure that U.S. antidumping law remains an effective deterrent are: anticircumvention, start-up costs, and sunset of existing orders. These areas are discussed in more detail below. However, there are many other areas in which it is important that the Congress provide the fullest possible authority to U.S. antidumping officials to ensure that there is no weakening of U.S. antidumping laws. These include provisions dealing with sales below cost in the home market, submission of evidence regarding costs, GS&A and profit calculations, averaging, and standing. In each instance, the Congress should assure that U.S. practice remains as close to current practice as

possible and that any changes made to U.S. law or current U.S. practice are minimized.

### Anti-circumvention

Some foreign producers who have been found to be dumping a particular manufactured product thereafter develop a scheme to avoid the antidumping order by exporting subassemblies that are not covered by the order for final assembly in the U.S. For example, this occurred in Motorola's case involving radio pagers (Pagers), where Motorola has been unable to prevent imports of Japanese pager parts for final assembly in the United States. It is not difficult for a foreign producer to evade an antidumping order in this manner, while still maintaining the vast bulk of its production operations in a foreign country. Similarly, in Motorola's case involving cellular mobile telephones (Cellular Phones), the Department of Commerce has faced several instances where foreign cellular phone producers have imported cellular phone subassemblies which they claim are not specifically covered by the order. In the Uruguay Round negotiations, the United States sought to improve the GATT antidumping code to specifically address such practices. However, no anticircumvention provision was included in the final agreement.

The U.S. currently has an anticircumvention provision on the books, but it has proven ineffective. U.S. law allows such unfinished imports to be covered only when the value of the U.S. final assembly operation is "small". Unfortunately, much of the effort necessary to produce a modern electronic product is research and development of technology and manufacturing techniques, prototype production facilities, and other pre- or early production efforts. Thus, the completed product has a relatively high value compared to the actual materials, subassemblies and components. It is not difficult for foreign producers (who control their own cost accounting) to keep their books in a way that shows that the value added in the United States (where the product is finished) is substantial, even if the final assembly operation takes little time.

Therefore, in the implementing legislation, the U.S. anticircumvention law must be amended to permit an order to cover foreign unfinished and/or unassembled products imported for final assembly in the United States, where the foreign components, engineering and development encompassed in the product represent a substantial portion of the value of the final product. Otherwise the United States will continue to have only a weak ability to enforce antidumping orders in the case of electronic products.

### Start Up Costs

Certain provisions in the final Uruguay Round agreement that govern the calculation of dumping margins could result in a substantial understatement of the actual degree of dumping faced by Motorola or other high technology industries. For example, these provisions arguably allow foreign producers who assert they are in a start-up period to claim that the fair value of their products need not include certain up-front costs, and that prices today based on anticipated lower future costs are fair prices even if they fail to cover current costs. In most high technology industries, particularly semiconductors, the cost of producing a product is quite high in the early stages because the yields (the good units compared to the faulty units) are very low. The prices must reflect these cost realities. Costs often continue to decline for such products over considerable periods of time, and the ability to price today based on future costs would be a license for predatory dumping. It would be very difficult for the U.S. to find dumping margins or to prevent the type of predatory and discriminatory pricing which threatened to destroy the U.S. memory semiconductor industries in the 1980's if foreign companies were permitted to charge prices based on expectations of lower future costs.

The ability to halt dumping at the beginning of a product cycle is essential. Even a short period during which foreign producers can sell at prices that do not cover costs can devastate a U.S. industry. For example, in memory chips, severe over-production caused Japanese producers to drop their U.S. prices as much as 80% - 90% between the end of 1984 and the summer of 1985 and forced most U.S. producers out of business before antidumping relief could be obtained. Yet, it is questionable whether substantial dumping margins would have been found on the new generation of products if the U.S. had been forced to accept Japanese producers' arguments that start-up costs for the emerging generation of products should be ignored and that hoped-for later cost levels should be used instead to set a fair value. U.S. implementing legislation must therefore ensure that such distortions in cost accounting do not undermine U.S. antidumping law enforcement.

### **Sunset of Antidumping Orders**

Yet another problem with the Uruguay Round provisions is the requirement that all antidumping orders in effect for more than five years—such as the pager and cellular phone orders—be terminated unless it is found that dumping and the resulting injury are likely to recur. Under current U.S. law, any foreign producer can have an antidumping order revoked if he can show that it has not been dumping and that it will not renew dumping. None of the respondents in Pagers or Cellular Phones has made such a showing, despite the fact that most of the relevant evidence is within their control.

However, if U.S. producers are required to prove in the new “sunset” proceedings that revocation of an antidumping order would cause renewed dumping, the establishment of such proof would be difficult and burdensome, given that the foreign producers have control over information concerning their strategic plans, production capacities, pricing, and other key factors. Thus, implementing legislation should ensure that the burden of proof is not placed on the domestic industry in sunset proceedings. Implementing legislation also should establish appropriate presumptions where the conduct of the foreign manufacturers indicates that continued or renewed dumping is likely.

### **SECTION 301**

While the antidumping law has been essential in preventing competitive abuses from injury to U.S. industries in the U.S. market, Section 301 has been instrumental in Motorola's efforts to crack foreign market barriers in countries such as Japan. The Uruguay Round agreements take certain steps to eliminate formal, official and obvious foreign market barriers, but they do little—if anything—to address the informal, tacit and subtle barriers that are equally effective in keeping out otherwise highly competitive firms such as Motorola. Closed purchasing patterns, supplier cartels, slow product approvals, biased licensing practices, obstructive technical certification procedures, and other practices countenanced or even encouraged by foreign governments can strip U.S. companies of their competitive edge or preclude competition altogether. Motorola has faced such obstacles in many foreign markets.

One recent well-publicized example of this has been Motorola's 10-year effort to compete fully in the Japanese cellular phone market. Pressure brought by the United States pursuant to its trade laws was successful in opening up half of the Japanese market to Motorola in the late 1980's, and now the same laws are being brought to bear in a strong effort to open the rest of the market. It is unlikely that this Japanese conduct, which involves the decisions of Japanese companies as well as the government, could be addressed successfully under the GATT. Only the effective leverage resulting from the threat of sanctions pursuant to Section 301 can



force a change in such practices which, of course, further the interests of Japan's domestic industries.

The Japanese cellular phone dispute is by no means the only instance in which Motorola has faced market structures, regulatory decisions, and economic regimes that severely limit Motorola's opportunity to compete. Within the United States, conduct which restricts open competition can be challenged under antitrust laws. These measures assure that every company will have an opportunity to compete, free of competitive abuses. However, in foreign countries where industries are often not yet globally competitive, unfair practices, restrictive policies and closed market structures that limit competition are perceived to be important to the success of local companies and, therefore, it is often difficult to convince countries to eliminate such practices voluntarily.

The United States' principal weapon to fight unfair foreign trade practices has been Section 301, backed by the willingness of our government to impose sanctions if necessary on those who persist in engaging in such unfair trade practices if negotiations fail. It is not at all clear that the new World Trade Organization (WTO) or the Uruguay Round provisions on non-tariff trade barriers will be available or effective to fight such unfair trade practices. Many unfair practices are too complex, unique, fluid and/or subtle to be addressed through specific GATT provisions, and thus are not included among the practices prohibited by the Uruguay Round. Therefore, the U.S. must both retain its ability to act when such abuses are detected and retain its full resolve to take action under Section 301 to eliminate foreign unfair trade practices which restrain competition.

Motorola has been assured by both the Administration and by influential members of Congress that the U.S. ability and resolve to use Section 301 is not and will not be reduced by the adoption of the Uruguay Round agreements. Motorola urges that this principle be clearly stated in the implementing legislation so that future administrations will have no misunderstanding of this intent and so that our trading partners will be under no misimpression that they have been able to cripple our ability to act in this key area.

### DISPUTE SETTLEMENT

The dispute settlement provisions contained in the Uruguay Round agreement may reduce the ability of the United States to prevent predatory dumping and reduce the ability of the United States to convince foreign countries to eliminate anticompetitive practices in foreign markets. Motorola is concerned that these measures may be used improperly by dispute settlement panels under the WTO to strike down any U.S. antidumping decision or Section 301 action that the panel feels is not consistent with the new Antidumping Code or other provisions of the GATT. Because the U.S. market is the most open in the world and because U.S. companies already must adhere to a comprehensive set of antitrust and fair competition laws, the U.S. has been the primary nation seeking to eliminate dumping and other unfair trade practices of foreign countries. Accordingly, many foreign countries wish to reduce the ability of the United States to enforce rules against dumping or use Section 301 to eliminate unfair trade practices. Because the WTO is a one-nation one-vote organization, Motorola has concerns that the WTO's dispute resolution powers may be used in part to achieve this goal. U.S. efforts to administer trade laws with enough flexibility and breadth to respond to foreign producers' attempts to avoid such laws is particularly susceptible to a dispute panel finding that the U.S. action was overbroad or outside of the rules established in the GATT.

Such result-oriented dispute panel findings could hamper the United States' ability to enforce its antidumping laws. For example, in the Cellular Phones antidumping case, a determination to prevent evasion by including cellular

subassemblies in the order was challenged in both the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit as being beyond the powers given to the administering authorities in the United States. The challenge in the U.S. courts was unsuccessful, but the outcome could have been far different had the case come before a hostile WTO panel. U.S. authorities must have the flexibility to take reasonable steps not inconsistent with the Code to enforce the antidumping law and to address the constantly changing strategies of foreign producers to avoid the impact of the antidumping law.

Similarly, dispute panel review is perceived by some as a threat to U.S. actions taken under Section 301 to open foreign markets. For example, in the case of the Semiconductor Trade Agreement, the United States would have been far less likely to achieve agreements to open the Japanese market to American semiconductors if the Japanese had felt that they could ignore U.S. threats of sanctions and U.S. antidumping duties because any such sanctions or duties could be overturned by a WTO dispute resolution panel. The United States must retain sufficient leverage in the application of its own laws in order to continue to be able to pry open closed foreign markets, and to prevent those protected by closed home markets from dumping in the United States.

Implementing legislation must ensure that the U.S. authorities have at their disposal the full range of tools and discretion granted under U.S. law and under the Uruguay Round agreements. Moreover, implementing legislation must assure that the power to change U.S. antidumping law, Section 301, or any other trade law continues to reside in the only place that the Constitution permits: the Congress. Such legislation must make clear that the WTO and its panels have no power to change U.S. law or to compel U.S. agencies to effect a change in U.S. law.

## **INTELLECTUAL PROPERTY PROTECTION**

Motorola's success in global markets is largely based on two factors: (1) its ability to develop the most advanced technology in the world and, (2) its ability to deliver products using that technology built to the highest attainable quality standards. The price of developing leading edge technology is very high -- Motorola invests over \$1 billion per year to develop new technologies and products. Exciting new technology is invented every day by Motorola engineers. U.S. patent and copyright laws recognize that protecting a company's ownership of an invention for a sufficient period of time to repay that investment is necessary to create an incentive for companies to make such an effort. Without intellectual property protection, technological progress grinds to a halt, because companies that do not make the investment simply steal the technology for their own products, giving them an unfair advantage in the market.

Unfortunately, such theft of U.S. intellectual property occurs far too often in foreign countries, often with the knowledge or even the blessing of the foreign government. The Uruguay Round agreement seeks to reduce such conduct, but it leaves many holes in its coverage. Therefore, the United States must not abandon its existing tools to address such problems. First, the U.S. must retain its ability to bring pressure on foreign countries to adopt and enforce intellectual property laws through measures such as Special 301. Second, the United States must monitor foreign countries' compliance with the requirements of the Uruguay Round to ensure that provisions related to border measures and compulsory licensing are not abused. Any abuse should trigger an immediate response, both in the form of a WTO proceeding and in the form of reciprocal U.S. treatment for the intellectual property of companies in the offending country. Third, the Congress must retain Section 337, which has been an important U.S. law used to prevent foreign companies that infringe U.S. patents and copyrights from selling their infringing products in the United States. Certain minor changes may need to be made to

Section 337 to bring it into conformity with an earlier determination by a GATT dispute panel, but the essence of the statute must be maintained.

There may come a time when all countries enforce intellectual property rights and the WTO can be relied upon to act swiftly to counteract any infringement. However, today, the WTO does not have this power. The U.S. must therefore maintain its own measures designed to eliminate and prevent companies from unfairly appropriating the hard-earned intellectual property of American companies.

## CONCLUSION

Motorola has consistently supported the conclusion of a strong and well balanced GATT accord. Throughout the negotiations, we voiced concerns about the impact of certain proposed provisions on the competitiveness of our company and on U.S. industry more broadly. The agreements concluded last December reflect the efforts of our negotiators to respond to some of these concerns. As a result of their hard work, for example, the provisions on antidumping and intellectual property rights in the final agreement contain important improvements over the draft text. Key members of this subcommittee in turn deserve credit for focusing the Administration's attention on critical issues, as this clearly contributed to our negotiators' ability to press for and ultimately win modifications to the text.

While Motorola believes good progress was made in the negotiations, it is clear that not all major U.S. negotiating objectives were met. Further intensive work is now needed in the development of implementing legislation to ensure the continued effectiveness and accessibility of U.S. trade laws, both those aimed at combatting dumping and those designed to resolve market access issues. In addition, we believe the implementing bill must contain provisions to ensure that the new multilateral accord on intellectual property rights genuinely yields the degree of protection intended. We believe that such measures aimed at eliminating unfair practices are critical to the development of free and fair trade world-wide. We welcome the opportunity to work with members of the subcommittee in the coming weeks to ensure that the agreements resulting from the Uruguay Round of multilateral trade negotiations help us achieve that goal.



Statement of James A. Langlois  
Executive Director  
National Apparel & Textile Association on  
Implementing Legislation for  
The Uruguay Round Agreement on  
Textile and Apparel  
Before the Committee on Ways and Means  
Subcommittee on Trade  
February 28, 1994

Thank you for the opportunity to present the views of the National Apparel and Textile Association (NATA) on legislation to implement the textile and apparel provisions of the Uruguay Round Agreement.

NATA is one of the largest trade associations of apparel importers and support industry company's representing over 80 companies in the West Coast. NATA has provided advice to the Administration throughout the negotiations and was particularly active in 1990 when most of the final text was negotiated.

NATA strongly supports implementation of the Agreement by the United States. The phase out of quota restraints on textile and apparel imports will lower apparel prices and increase choice, substantially benefitting the U.S. consumer. The Agreement will liberalize global markets and encourage efficiency of production and supply.

The Agreement rationally provides a transition period for the phase out of quotas, ensuring predictability and a smooth adjustment by producers, importers and retailers. We strongly urge that the implementing legislation be crafted and structured to ensure a smooth transition.

Article 2 of the Agreement contains a key element in the transition -- a requirement that the United States (and all other importing nations) integrate into GATT rules a specific percentage of textile and apparel trade in three stages during the transaction. The Agreement requires integration of 16% in year one, 17% in year four and 18% in year eight, with the remaining 49% being integrated at the end of the ten-year transition. Integration requires the removal of quota restraints and must be spread over four segment: tops and yarns, fabrics, make-up textile items (e.g. luggage), and apparel.

Each importing country may choose, by category or Harmonized System number, those items to be integrated. We strongly urge that the following principles be incorporated into the implementing legislation on this matter:

1. The Administration's procedure for choosing items to be integrated should be open and provide an opportunity for written and oral public comment, following notice in the Federal Register.
2. The choices should be spread evenly over the four segments of tops and yarn, fabrics, made-ups, and apparel.
3. The procedure should be orderly and completed at least one year in advance of each of the last two stages, i.e. by the end of year two and by the end of year six.
4. The choices should be based on impacts on all interested parties including consumers, manufacturers, importers and retailers.

In closing, I want to stress the importance of avoiding major trade disruptions in the transition process. The inclusion of a ten-year period for transition was to allow adjustment and avoid sudden impacts. Consequently, the integration process should proceed moderately, neither too quickly nor too slowly. Integration should include all types of goods, some sensitive and some not, to ensure a smooth transition.

Thank you.

BEFORE THE  
SUBCOMMITTEE ON TRADE  
WAYS AND MEANS COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

**Hearings On the Trade Agreements Resulting From  
The Uruguay Round Multilateral Trade Negotiations**

WRITTEN STATEMENT OF PPG INDUSTRIES, INC., GLASS GROUP

This statement on the Uruguay Round results is made on behalf of PPG Industries, Inc., Glass Group, a U.S. manufacturer of float (flat) glass and fabricated float glass products.* The principal uses of float glass and fabricated float glass is as an architectural and motor vehicle glazing (i.e., window) material.

On balance, PPG is supportive of the Uruguay Round results, provided that serious concerns are handled effectively by the Administration and Congress in implementing legislation and in continuing negotiations and reviews.

**1. MARKET ACCESS**

PPG does not object to the tariff cuts on flat glass and fabricated flat glass products to which the United States has agreed in the Round (HTS items 7005 - 7008). It expects that any additional negotiations on market access between December 15, 1993, and finalization of the market access talks will not result in any additional cuts of U.S. tariffs on these products.

**2. THE SUBSIDIES AND ANTIDUMPING CODES, AND RELATED ISSUES CONCERNING THE COUNTRY OF ORIGIN PROVISIONS**

Effective relief from subsidized and dumped imports has long been important for U.S. flat glass producers. The industry has brought numerous countervailing duty and antidumping duty cases against imports from Europe, Asia and the Americas. The effectiveness of those remedies was limited by interpretations of current U.S. law implementing the Subsidies Code and Dumping Code. Flat glass producers were, therefore, encouraged when Congress aimed at strengthening disciplines on subsidies and dumping by authorizing negotiations in the Uruguay Round:

to improve the provision of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices.

Section 1101(b)(8)(A), Omnibus Trade and Competitiveness Act of 1988; 19 U.S.C. § 2901(b)(8)(A). As discussed below, not only do the final texts from the Uruguay Round fall short of these goals, they actually, on balance, decrease disciplines on unfair trade practices.

**A. Subsidies**

Although there are some positive aspects of the Final Act's provisions on Subsidies, there are numerous provisions exempting subsidies from prohibitions and otherwise reducing subsidy disciplines.

The positive aspects of the new subsidy provisions include a slight expansion of expressly prohibited subsidies, to include those contingent upon use of domestic goods as well as those relating to export performance. Another potentially positive aspect is a definition of "serious prejudice" in the context of a government's right to consultations when "seriously prejudiced" by another country's subsidy practices. The definition which provides certainty in a previously obscure area, deeming serious prejudice to exist, for instance, when ad valorem subsidization exceeds 5 per cent.

There are, however, numerous negative aspects to the text which reduce disciplines on subsidies. For instance, four broad categories of subsidies are made

* This written statement in lieu of personal appearance is filed pursuant to the Committee's press release 19 (January 6, 1994) and the Subcommittee's press releases 22 (January 6, 1994) and 24 (January 25, 1994).

non-actionable. Those expressly permitted categories are (1) subsidies which are not specific to certain enterprises (thus, the ability of other countries to offset subsidies is reduced as the benefit is broadly conferred), plus the following three categories, made non-actionable even when specific to certain enterprises: (2) assistance for research activities (up to certain limits), (3) assistance to disadvantaged regions, (4) assistance for costs of meeting new environmental requirements (up to certain limits). Other negative aspects are the text's defining away private subsidies (preventing recourse, e.g., when export targeting is financed by a company's cross subsidization), and making non-actionable subsidies which are given in a form other than a financial contribution by a government or public body (making non-actionable, e.g., benefits conferred through export bans).

A commitment to address the serious concerns on subsidies in the implementing legislation is needed to render the subsidies text acceptable.

#### B. Antidumping

Although the U.S. negotiators worked hard in the final days of the negotiations to lessen some of the negative aspects of the earlier draft text (the so called "Dunkel draft"), at the end of the day they were able only to convert a totally unacceptable text into a bad text.

The final text will make it more difficult and costly to bring dumping cases, to cause antidumping duty orders to be issued, and to keep orders in force when dumping continues. There are no positive aspects accompanying the negative aspects of the dumping text. Flat glass producers are very concerned about the weakening of this important remedy against international price discrimination.

Among the negative aspects of the dumping text is the absence of any reference to diversionary dumping, dumped inputs, and export targeting practices, the three items explicitly identified by Congress (19 U.S.C. 2901(b)(8)(a), quoted above) as not adequately covered by the current multilateral provisions.

Additionally, there is a serious weakening of existing U.S. law in many areas. The Final Act of the Uruguay Round includes: a sunset provision, aimed at terminating antidumping duty orders at the end of a certain time period unless injured industries facing continued dumping prove continuing harm or its likely recurrence; standing requirements which make it more difficult for a petitioner to act in the interest of domestic producers or workers; limitations on the values that can be used in constructing the foreign market value of imports; limits on when foreign market sales made at prices below the cost of production may be disregarded; authorization of averaging of the import prices in investigations, decreasing the likelihood of finding margins on individual sales; a high "de minimis" margin floor, below which dumping will not cause issuance of an antidumping duty order; import volume levels considered negligible, and therefore exempt from antidumping disciplines, which are unacceptable for many industries; and restriction on cross cumulation. Although negotiations are to continue, there are not yet any provisions to address the numerous ways in which antidumping duty orders can be, and are being, circumvented.

Hence, the final text remains seriously flawed. As with subsidies, acceptability of the agreement will require administration and congressional commitment to address fundamental concerns in implementing legislation and in the continuing WTO processes.

#### C. Agreement on Rules of Origin

While recognizing that uniform rules of origin are generally positive, flat glass producers would be concerned by automatic application of the general rules of origin in determining the country of origin of products covered by antidumping duty or countervailing duty orders. Specifically, although minor changes of a product may be sufficient to change the country of origin for normal customs purposes, such changes should not permit circumvention of trade remedies.

With respect to both normal country of origin concerns and those in connection with antidumping and countervailing duty coverage, the acceptability of this agreement will depend on whether the domestic industry is provided the opportunity for early input to U.S. officials participating in drafting specific rules through the WTO and Customs Cooperation Council, and whether the United States retains the ability to prevent minor product modifications from changing the country of origin in the antidumping and countervailing duty context.



### 3. SECTION 337 AND 301 REMEDIES

Section 337 (Tariff Act of 1930). Although not addressed in the Round, the implementing legislation should provide for maintenance of a strong section 337 remedy, critical for manufacturers with intellectual property interests. GATT consistency would be relevant, of course, in drafting the provisions following the GATT panel finding that the current 337 provision violates the GATT's national treatment requirement.

Section 301 (Trade Act of 1974). The final text's provision for automatic adoption of the reports of dispute panels raises some questions about the ability of the United States to take actions, such as retaliation, under section 301 without authority under WTO procedures. Section 301 remains the only vehicle for addressing certain countries' practices covered by the U.S. negotiating objectives but not the final text. This will be true until additional rules and disciplines are developed through further multilateral or other negotiations. As section 301 will continue to be a critical tool for many industries against unfair practices not expressly disciplined by the multilateral agreements, it is important that implementing legislation maximize the potential utility of this important tool.

4. - Agreement on Implementation of Article VII (Customs Valuation),
- Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value, and
- Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires.

Changes concerning customs valuation are generally positive. The expressed authority to pursue the accuracy of declared values is certainly important, as is the balance achieved by assuring notification and other due process protections and access to the dispute settlement mechanism. Authority to challenge declared values is particularly important in related-party transactions and when an import is the subject of an antidumping or countervailing duty proceeding or order.

PPG supports the texts regarding minimum values, and their aim of eliminating minimum value practices, which are protectionist, trade distortive and unjustified under any criteria. Accordingly, any period for transition to transaction values should be short. The acceptability of the changes in the agreement and the supplemental texts on minimum values will depend, therefore, on the transition periods agreed to by the Committee on Customs Valuation.

PPG also supports the provision of technical assistance to countries concerned with particular issues such as sole agents, but notes that such issues should not be used to delay transition of customs activity from minimum prices to transaction values.

### 5. AGREEMENT ON PRESHIPMENT INSPECTION

Although of only minor importance to flat glass producers, PPG supports the changes accomplished in the Round concerning preshipment inspection.

### 6. AGREEMENT ON IMPORT LICENSING PROCEDURES

The agreement on import licensing procedures in the Final Act would be mandatory for all members--unlike the discretionary Tokyo Round provisions which the new text refines. This is a favorable development.

### 7. GOVERNMENT PROCUREMENT

A one-page decision in the final act ("Decision on Implementation of Article XXIV:2 of the Agreement on Government Procurement") refers to document GPR/Spec/77, which represents the outcome of efforts on government procurement rules conducted in parallel with the Uruguay Round. PPG views the changes concerning procurement, particularly inclusion of subnational governments within the regime, as positive developments.

### 8. UNDERSTANDINGS ON VARIOUS GATT ARTICLES

PPG would support the understandings on GATT articles set forth in the Final Act.

Understanding on Art. II:1(b). PPG supports the restriction upon countries' using increases in "other duties and charges" to indirectly increase bound tariffs. PPG is disappointed, however, by the inconsistency between paragraphs 2, 4 and 8 of the Understanding concerning the date on which other duties and charges are bound, and in particular by the suggestion at paragraph 8 that paragraph 2 supersedes the decision by the GATT Council in 1980, which decision is tracked in Paragraph 4. The 1980 decision should, through paragraph 4, remain the policy.

Understanding on the Interpretation of Art. XVII (state trading enterprises). This understanding--improving notification transparency and establishing a working party to review notifications and the adequacy of information, and to handle counter-notifications--represents a strengthening in areas of importance to the flat glass industry vis-a-vis developing countries and countries in transition.

Understanding on the Balance-of-Payments. This understanding slightly improves the balance of payment provisions by requiring: first resort to price-based measures rather than, e.g., quotas; transparent administration of restrictions; and consultations on steps being taken toward elimination of the restrictions.

Understanding on the Interpretation of Art. XXIV. The understanding on Article XXIV gives welcomed guidance on rights and obligations to accompany creation of customs unions and free trade areas.

Understanding on the interpretation of Art. XXVIII. PPG supports the provision of certain compensation rights to developing countries when withdrawal or modification of concessions under Art. XXVIII impact their important trade flows.

Understanding on the interpretation of Art. XXXV. PPG supports this understanding's allowing countries to engage in negotiations on a possible schedule of concessions while retaining the right of non-application under Article XXXV.

#### 9. AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES (TRIMs)

PPG supports progress in the Round toward reducing trade distorting investment measures. Distortive measures are not eliminated by the new provisions, however, and additional U.S. negotiations will be necessary, therefore--as part of the WTO processes, as well as on bilateral and plurilateral bases--to move nearer U.S. objectives on TRIMs, which include:

- to obtain enforcement of GATT rules against the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that substantial direct investment in the foreign country be made;
- to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and
- to develop internationally agreed rules, including dispute settlement procedures, which will help ensure a free flow of foreign direct investment and will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

Section 1101(b)(11), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2901(b)(11)).

U.S. investors abroad have long faced local content, trade balancing and foreign exchange requirements in foreign markets notwithstanding their prohibition under GATT. The final text on TRIMs confirms the prohibition of such practices under Articles III or XI of the GATT. The agreement does not address other important issues, however, such as mandatory technology transfer and maximum foreign equity rules, which have obvious trade impacts. It is critical that these issues be addressed in the review of trade related investment measures envisioned in the agreement. Finally, a basis for serious concern arises from the long transition rules for practices which are admittedly already prohibited by the GATT.

#### 10. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

Trademarks, patents (product and process), and trade secrets ("undisclosed information") are intellectual property areas of particular concern to flat glass producers. The U.S. negotiating objectives were:

- to seek the enactment and effective enforcement by foreign countries of laws which (i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and (ii) provide protection against unfair competition;
- to establish in the GATT obligations (i) to implement adequate substantive standards based on (I) the standards in existing international agreements that provide adequate protection, and (II) the standards in national laws if international agreement standards are inadequate or do not exist, (ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented, and (iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;
- to recognize that the inclusion in the GATT of adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and dispute settlement provisions and enforcement procedures is without prejudice to other complementary initiatives undertaken in other international organizations; and
- to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

Section 1101(b)(10), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2901(b)(10)). The the United States negotiators were able to obtain most of these objectives. Particularly positive is the agreement's aim to cause improved enforcement rights, remedies, standards and dispute settlement procedures in the member States.

Long transition rules for certain countries or technology areas, however, will be troublesome for certain domestic industries, as would defeat of the agreement's purpose through countries' improper use of the provisions on "control of anti-competitive practices in contractual licenses."

#### 11. AGREEMENT ON SAFEGUARDS

On safeguards, as with TRIPs, the U.S. did well in meeting its principal negotiating objectives, which were:

- to improve and expand rules and procedures covering safeguard measures;
- to ensure that safeguard measures are (i) transparent, (ii) temporary, (iii) degressive, and (iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and
- to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

Section 1101(b)(12), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2901(b)(12)).

Countries should become more willing to provide some forms of escape clause relief as a result of the agreement's elimination of the compensation requirement when relief is for only a short-term. The quota modulation provision, although technically inconsistent with the most favored nation rules, is also a positive modification, increasing the likelihood of relief by focusing the remedy at the specific country or countries generating the trading activity.



## 12. AGREEMENT ON TECHNICAL BARRIERS TO TRADE

PPG is generally supportive of the modification to the Code on technical barriers to trade as they reduce the likelihood that technical standards will be used to discriminate against international trade.

## 13. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Bearing in mind the need for the continued availability of section 301-type relief (discussed above), PPG is generally supportive of the dispute settlement agreement, particularly the streamlined, time-specific procedures, which should make dispute settlement actions subject to completion within reasonable time limits.

The acceptability of mandatory dispute settlement will depend on the standard and scope of review applied by the panels. It supports the general concept, however, including opportunity for appeal.

Also, an important aspect of the dispute settlement understanding, enhancing enforcement of U.S. rights, is the ability to cross retaliate where it is not practicable or effective to do so within the area of a violation. PPG supports that authority.

## 14. TRADE POLICY REVIEW MECHANISM

PPG is generally supportive of the trade policy review mechanism (TPRM). It has been an important, unified source of information, increasing the transparency of the trade practices of our major trading partners. The only limitation to date has been the editorial positions of the Secretariat, describing remedies expressly authorized by the GATT, such as countervailing duties and antidumping duties, in terms suggesting they somehow undermine or are contrary to the GATT.

The future value of the TPRM will depend on what the contracting parties and the Secretariat do with the information collected and disseminated.

## 15. DECLARATION ON THE CONTRIBUTION OF THE WTO TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

An objective of the 1988 Act achieved in the Round is one seeking coordination of trade and monetary policy: "to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions." Section 1101(b)(6), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2901(b)(6)).

The GATT in fact has had a program to improve coordination with the IMF and World Bank since the Mid-term review results in 1989. The declaration on the contribution of the WTO to achieving greater coherence in global economic policymaking is a further step in this direction. Paragraph 5 of the declaration sums up the direction and is generally supported by PPG:

The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The WTO should therefore pursue and develop cooperation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further invite the Director-General of the WTO to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.

PPG retains as a reservation to its support of this paragraph that the caveats added to accommodate concerns of the developing countries be revisited within five years.

#### 16. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

The principal U.S. negotiating objectives included "(1) to enhance the status of the GATT; (2) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and (3) to expand country participation in particular agreements or arrangements, where appropriate. Section 1101(b)(2), Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 2901(b)(2)).

Important revisions to the draft text were accomplished through U.S. efforts toward the conclusion of the negotiations which should make the WTO concept more acceptable. The United States has minimized loss of sovereignty (necessarily flowing, in particular, from binding dispute resolution) through articles dealing with interpretation of amendments, and those in the dispute settlement text concerning the findings a panel may make.

#### 17. U.S. NEGOTIATING OBJECTIVES NOT IN THE ROUND'S RESULTS

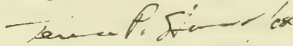
There are several U.S. negotiating objectives that were not addressed in the final text and which are not otherwise considered above. Several are of significant importance to U.S. industry: (1) the objectives with regard to countries running large and persistent global current account imbalances; (2) redressing the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes; (3) objectives on worker rights; and (4) objectives promoting improved access to high technology. PPG would urge the Administration and the Congress to see that these issues as well as others identified as part of the review of the Final Act provisions be addressed as expeditiously as possible in the WTO, otherwise on a multilateral basis, or in bilateral or plurilateral negotiations.

#### 18. CONCLUSION

On balance, PPG supports the Uruguay Round agreement, on condition that the serious issues of concern be addressed in implementing legislation. Of particular concern are the areas of antidumping duties, subsidies and countervailing duties, sections 301 and 337, and country of origin.

PPG also urges that ongoing bilateral negotiations with countries whose practices inhibit access to U.S. flat glass and fabricated flat glass be moved forward vigorously and that other serious bilateral problems with certain major trading partners be promptly addressed. Early examination of negotiating objectives not addressed in the Round is also necessary.

Respectfully submitted,



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Special Counsel for  
PPG Industries, Glass Group

Before the  
Subcommittee on Trade  
Committee on Ways and Means  
U.S. House of Representatives

**STATEMENT OF THE**  
**TANNERS' COUNTERVAILING DUTY COALITION**  
**ON THE TRADE AGREEMENTS RESULTING FROM THE URUGUAY ROUND**  
**OF MULTILATERAL TRADE NEGOTIATIONS**

Mr. Chairman and Members of the Subcommittee:

The Tanners' Countervailing Duty Coalition ("TCC") appreciates this opportunity to present its comments on the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. The Tanners' Countervailing Duty Coalition is a group of U.S. leather tanners that successfully petitioned the Department of Commerce for a countervailing duty order against Argentine leather in 1990. See Attachment 1.

The Tanners' Countervailing Duty Coalition urges the members of this Subcommittee to ensure that indirect subsidies, such as export restraints, continue to be actionable under the legislation implementing the GATT agreements. Under the current countervailing duty statute, a 20-year embargo on Argentine cattlehides was found to constitute a subsidy to this South American tanning industry. By prohibiting the exportation of this raw material, the Argentine government engaged in "[t]he provision of goods or services at preferential rates" in violation of U.S. countervailing duty law. Since the new GATT Subsidies Code also defines the term "subsidy" to encompass governmental provision of goods or services, either directly or indirectly, at "less than adequate remuneration," the U.S. Congress should clarify that this provision continues to require the countervailability of export restraints.

To do otherwise would be unconscionable in light of the history of this case. The Government of Argentina first imposed a prohibition on exports of wet salted bovine hides on May 15, 1972. Executive Power Decree No. 2861/72 was promulgated with the stated purpose of "assuring adequate supplies [of untanned cattle hides] for the domestic tanning industry." With "adequate supplies," Argentine leather tanners were also assured of another important benefit: prices that were substantially below hide prices on the international market.

In response to this unfair trade practice, the Tanners' Council of America, Inc. filed a petition in 1979 under section 301 of the Trade Act of 1974, as amended, alleging that Argentina's hide embargo constituted an unjustifiable and unreasonable trade practice within the meaning of that statute. At the request of the U.S. Trade Representative, Argentina signed a formal agreement pledging to eliminate this GATT-illegal export restraint by first converting it from a quantitative restraint into an export tax and then reducing that tax to zero. Unfortunately, Argentina failed to honor its commitments under the agreement. First, Argentina set a minimum export price for hides, thus effectively increasing the amount of export tax above the agreed-upon level. Second, the scheduled reductions in the amount of the export tax were ignored.

The U.S. leather industry was therefore compelled to seek termination of this agreement in 1981. On October 30, 1982, this request was granted. Three years later, Argentina reconverted the export tax into an absolute embargo. Secretary of Industry Resolution 321 (Sept. 12, 1985). The resolution announcing the reinstitution of the export ban stated that its purpose was to "maintain the volume of supply of raw materials adequate to the needs of the domestic market of the leather tanning and manufacturing sector facilitating a smooth flow of supplies while avoiding any undue increase in prices." *Id.*



The export restriction provides direct and substantial benefits to Argentine tanners. Through this government-imposed restriction on hide exports, an excess supply is created and prices decline below free-market levels. The price-depressing nature of this export restraint is confirmed by the language of the Argentine resolution reimposing the export ban and has been acknowledged by the Department of Commerce. In the 1994 U.S. Industrial Outlook, the Department stated:

Many of the developing countries that produce large quantities of hides and skins, including Argentina, Brazil, and India, restrict exports of domestically produced hides, thus encouraging growth of their own tanning and leather products industries. The restrictions depress the prices foreign tanners and leather products manufacturers pay for raw materials and indirectly subsidize production and exports of leather and leather products, large quantities of which are exported to the United States.

U.S. Dept. of Commerce, 1994 U.S. Industrial Outlook, 34-3 (Jan. 1994).

Because this subsidy encouraged increased exports to the United States, the Tanners' Countervailing Duty Coalition filed a petition under the countervailing duty law in February 1990. The petition charged that Argentina's unfair trade practice not only violated U.S. law but also the General Agreement on Tariffs and Trade ("GATT"). That provision prohibits export restrictions, as follows:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by an contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sales for export of any product destined for the territory of any other contracting party.

The illegality of this practice was confirmed on October 2, 1990 when the U.S. Department of Commerce announced that Argentina's hide embargo constituted a subsidy within the meaning of U.S. countervailing duty law and issued an order affecting leather imports subject to the investigation. 55 Fed. Reg. 40212 (1990). In that determination, the agency emphasized that it "held petitioners to an extremely high standard of proof, requiring them to substantiate their claim that the embargo had a direct and discernable effect on hide prices in Argentina." Id. at 40213.

Examining prices for U.S., British and Argentine hides for more than 30 years, the Commerce Department determined that "hide prices in the six largest exporting nations, including the United States, were higher than Argentine hide prices . . . ." Id. The agency found a "clear link" between the imposition of the export ban and the divergence between U.S. and Argentine hide prices. Id. at 40214. They made a further finding that other factors, such as hide quality differences, inflation and cattle slaughter, did not account for the large disparity between Argentine and world pricing levels for hides. Id. As a result of its investigation of the hide embargo and other subsidy practices, a countervailing duty of 15 percent was imposed on the leather subject to the order, with one company assessed a duty rate of 24 percent.

The fact that Argentina converted the embargo into an export tax in 1992 does not diminish the beneficial effects provided to Argentine tanners nor alter its countervailability. In commenting on how an export tariff confers subsidies, one GATT expert noted:

Export tariffs can be a form of protection. If an important exporting country restricts the export of a raw material, the domestic price of the raw material will tend to fall and world market prices will tend to rise. The domestic manufacturing industry able to purchase the raw material at the local price will

therefore have an advantage over foreign manufacturers that have to pay world market prices . . . .

Roessler, GATT and Access to Supplies, 9 J. World Trade L. 25, 31 (1975).

It is therefore not surprising that the Department of Commerce found that the export taxes on Canadian logs were a countervailable subsidy under U.S. law -- a determination the agency expressly found to be consistent with the GATT and the GATT Subsidies Code. Certain Softwood Lumber Products from Canada, 57 Fed. Reg. 22570, 22612 (1992).

As evident from the above discussion, governmentally-imposed export restrictions on raw materials clearly confer benefits on foreign industries, to the detriment of their American competitors. The agreements resulting from the Uruguay Round did not alter the nature or effect of these unfair practices. Moreover, since the new GATT Subsidies Code, like current U.S. countervailing duty law, deems the governmental provision of goods at preferential rates to be an actionable subsidy, the GATT implementing legislation should make clear that export restraints (in the form of embargoes or export taxes) continue to be subject to these special duties. To assist the Subcommittee, we have attached some suggested legislative and report language for your consideration. See Attachment 2.

Thank you for your interest in this matter of critical concern to the Tanners' Countervailing Duty Coalition.

**MEMBERS OF THE**  
**TANNERS' COUNTERVAILING DUTY COALITION**

Hermann-Oak Leather Company

Salz Leather Company

Prime Tanning Company, Inc.

Irving Tanning Company

S.B. Foot Tanning Company

Westfield Tanning Company

Suncook Tanning Corporation

United Tanners, Inc.

Paul Flagg, Inc.



## SUBSIDY DEFINITION

### Statutory Language

Add to 19 § 1677(5):

*The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in Section 1303 of this title and includes, but is not limited to, the following:*

- (i) Any export subsidy described in Annex AIV to the Agreement (relating to illustrative list of export subsidies).*
- (ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, whether or not the competitive benefit conferred by the government subsidy has been demonstrated to have an effect on the price or output of the subject merchandise, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:*
  - (I) The provision of capital, loans, or loan guarantees on terms inconsistent with private commercial considerations, and the provision of grants.*
  - (II) The provision of goods or services at rates less than those that would be paid under prevailing market conditions, or purchases of goods at rates that exceed those that would be paid under prevailing market conditions.*
  - (III) The failure to collect government revenue that is otherwise due, is foregone or not collected (e.g., fiscal incentives such as tax credits).*
  - (IV) The assumption of any costs or expenses of manufacture, production, or distribution.*
  - (V) The provision of a benefit at government direction or through the entrustment of private bodies with government functions that, if provided directly by the government, would be a bounty or a grant.*
  - (VI) Maintenance of any form of income or price support.*

### Legislative History

This provision implements Article 1.1 of the GATT defining subsidies. With few exceptions, the new Uruguay Round Subsidies Code parallels or adopts U.S. law and makes a broad range of actions countervailable. The Code defines subsidies broadly to include not only direct outlays of money by the government but also indirect subsidies including revenue foregone by the government, the provision of goods and services below prevailing market rates, and instances in which the government entrusts or directs a private body to carry out certain enumerated functions. As a result, relatively few changes to U.S. law are necessary.

First, subparagraph (ii) clarifies existing U.S. law and Department of Commerce practice in light of some confusion evidenced by a recent decision by a binational panel established under the U.S.-Canada Free Trade Agreement in the countervailing duty case concerning certain softwood lumber products from Canada. The panel misinterpreted U.S. law to require that even after the Department of Commerce has found that a subsidy was provided, the Department must further demonstrate that the subsidy has the effect of lowering the price or increasing the output of a good before a duty can be imposed.

Such an "effects" test for subsidies has never been mandated by the law. As the Department of Commerce explained in Certain Flat-Rolled Carbon Steel Products:

Nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance. See 19 U.S.C. section 1677(6). Nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.

The Department also noted that Congress in the 1979 Act had explicitly rejected the use of "effects" tests. Both the courts and the Department have adhered consistently to this interpretation of the countervailing duty statute.

From a policy perspective, the prohibition against an "effects" analysis is compelling. First, "effects" analyses by nature are highly speculative. It is burdensome and unfruitful for the Department to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise. Second, experience shows that an "effects" test would likely be used to reduce or eliminate the ability of injured U.S. industries to offset unfair subsidies by imposing unrealistic burdens of proof, as occurred in the Softwood Lumber case. Third, a strict rule that the benefit received will be offset acts as a deterrent to further subsidization.

Second, subparagraph (I) clarifies that the standard under international law for assessing whether a transaction is commercially reasonable is that of a private investor, pursuant to Article 14(a) of the Subsidies Code.

Third, subparagraph (II) adopts the standard in Article 14(d) of the Subsidies Code governing when the provision of goods and services is made for adequate remuneration. Current U.S. law commands the Department of Commerce to countervail the "preferential provision of goods and services." Goods and services given at "preferential" prices has been defined, through case law and otherwise, in reference to nondiscriminatory prices regardless of whether those prices truly reflected the value of the goods or services. Under the Uruguay Round Subsidies Code text, however, the provision of goods and services is to be measured "in relation to prevailing market conditions for the good or service in question in the country of provision or purchase."

This change could affect the way in which some subsidies are treated for purposes of the countervailing duty law. For example, where goods are provided at below-market rates to an enterprise or industry, the measure of the subsidy will not be the nonpreferential price offered to other enterprises or industries as now. Rather, the measure will be what the price would have been in the prevailing market conditions -- i.e., absent governmental interference with the normal operations of supply and demand in the marketplace. Government interference would include restrictions on the export sale of inputs, such as embargos or export taxes that have the substantially equivalent effect of restrictions on raw materials such as hides or logs. Adjustments could be made, if necessary, for differences from normal marketplace factors (i.e. price, quality, availability, marketability, transportation and other conditions of purchase or sale). Where an internal market is so distorted by government intervention so as to render an evaluation of prevailing market factors difficult or impossible, the prevailing market conditions should be evaluated with reference to similar markets in third countries.

Fourth, subparagraph (III) adopts the formulation of the Subsidies Code making countervailable a wide range of government actions by which revenue that is otherwise due, is foregone or not collected. Thus, tax credits deprive the government of revenue the government otherwise would have collected, as do tax rebates, property tax breaks, the waiver or reduction of government fees or fines, and the failure to enforce fully laws that otherwise would yield the government revenue.

Fifth, subparagraph (V) implements the language in Article 1.1(a)(1)(iv) of the Subsidies Code. The history of this provision illuminates its purpose. In the so-called "Cartland" draft of the Uruguay Round, foreign governments had negotiated for a restrictive definition of subsidy that required the financial contribution to be provided

directly by the government. Recognizing the inconsistency of a restrictive definition with U.S. laws, U.S. negotiators insisted on a broad definition of subsidies that would cover instances where the government does not directly provide a benefit but indirectly acts in such a way as to confer benefits on private parties.

Subparagraph (V) captures those subsidies in which the government indirectly acts to provide benefits to private firms. Thus, for example, if the government maintains a program that results in private bodies providing equity or credit at lower rates than would be paid under prevailing market conditions, or a program that results in the provision of below-market credit, such a program is countervailable. This is consistent with the language of the new Subsidies Code, which covers government actions through which private bodies are invested with one of the enumerated functions normally done by governments, such as providing loans at below-commercial rates. Similarly, for example, export restrictions, such as embargos or taxes that have the substantially equivalent effect of restrictions, that direct companies to sell logs or hides only in the domestic market invests in the private body what would be a normal government function as enumerated in the Code, the preferential provision of goods and services. If such government actions otherwise meet the requirements of U.S. law they are actionable.

Finally, subparagraph (VI) incorporates the language from Article 1.1(b) any form of income or price support countervailable. It is Congress' understanding that the inclusion of the word "any" by the GATT negotiators is intended to catch a broad range of measures that in fact provide income or price support, whether they are labelled as such or not.



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**SUPPORTERS OF MISCELLANEOUS TARIFF LEGISLATION**

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12th Floor  
Washington, D.C. 20006

202/872-8181  
Fax 202/872-8696

February 28, 1994

Ms. Janice Mays  
Chief Counsel and Staff Director  
Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth House Office Building  
Washington, D.C. 20515

SUBJECT: Uruguay Round Implementing Legislation

Dear Ms. Mays:

Pending an overall satisfactory conclusion of the Uruguay Round negotiations, we, the undersigned companies and associations, are submitting these comments on the outcome of the Uruguay Round with respect to our interests and our views on provisions that we urge be considered for inclusion in the implementing legislation.

We are very pleased that the U.S. trade negotiators were able to incorporate almost all pending noncontroversial duty suspensions/reductions into the market access offers. The duties on these products will go to zero or be reduced immediately upon implementation of the agreement, now scheduled for July 1, 1995. We are very grateful for the direct support in achieving this successful outcome we received from Committee Chairman Dan Rostenkowski, from Subcommittee Chairman Sam Gibbons and from the Majority and Minority Trade Subcommittee staffs.

The inclusion of these tariff concessions recognizes the benefits that accrue to the U.S. economy from the liberalization of tariffs. As U.S. Trade Representative Mickey Kantor has frequently emphasized in testimony to the Congress, despite the estimates resulting from current methods for calculation of revenue loss figures, there will be future increases in tax revenues that far surpass the loss of tariff revenues as the dynamic effects of lowered prices to consumers and producers help spur greater economic growth, in turn leading to increased employment and production.

In addition to implementing the tariff concessions negotiated in the Uruguay Round, we feel this is an appropriate context to consider enacting a number of duty suspension and miscellaneous tariff issues that are still pending before the Congress. Duty suspensions/reductions and technical miscellaneous tariff legislation have been closely tied to U.S. trade negotiations for several years.

The pending issues we would like to be considered in the context of the Uruguay Round implementing legislation include:

- Legislation to extend existing noncontroversial duty suspensions/reductions and to enact new duty suspensions/reductions covered by the Uruguay Round market access agreement for the period prior to implementation of that agreement.
- Legislation to enact noncontroversial new duty suspensions/reductions not included in the Uruguay Round market access agreement.
- Legislation to enact technical miscellaneous tariff and customs amendments, not incorporated into the Uruguay Round market access agreement.
- Effective date provisions implementing the duty suspensions/reductions and miscellaneous tariff provisions as of January 1, 1993.
- Legislation to establish an acceptable administrative procedure for duty suspensions/reductions and certain miscellaneous tariff matters.

Thank you very much for this opportunity to submit our views. We look forward to working very closely with your Committee on these issues in the coming months.

Sincerely,

The 3M Company  
 Adams-Mellin, Division of Sara Lee Corp.  
 Agglomerate Stone Tile Importers Consortium  
 Albany International/Mt. Vernon  
 American Cyanamid Company  
 American Cycle Systems, Inc.  
 American Association of Exporters and Importers  
 American Electronics Association  
 American Stone Distributors, Fabricators & Installers Committee  
 American Tartaric Chemicals, Inc.  
 Apple Computer Inc.  
 Appleton Mills  
 Arctco, Inc.  
 Ashton-Drake Galleries, Ltd.  
 Asten Forming Fabrics, Inc.  
 Asten Group, Inc.  
 Atlanta Wire Works, Inc.  
 Avon Products, Inc.  
 BASF Corporation

Bausch & Lomb Incorporated  
 Baxter Healthcare Corp.  
 Belmont Hosiery Mills, Inc.  
 Bicycle Manufacturers Association of America, Inc.  
 Biocraft Laboratories, Inc.  
 Bossong Hosiery, Inc.  
 Buster Brown Apparel, Inc.  
 Canned and Cooked Meat Importers Association  
 Cannondale Corporation  
 Carolina Cook Industries, Inc.  
 Century Juvenile Products  
 Charleston Hosiery, Inc.  
 Cheminova, Inc.  
 Ciba  
 The Clarksville Division, Metal Forge Co.  
 Club Car, Inc.  
 Compaq Computer Corporation  
 Computer and Business Equipment Manufacturers Association  
 Crompton & Knowles Corporation  
 Dayco Products, Inc.  
 D. Klein & Sons  
 Department 56  
 Dial Corporation  
 E. I. Dupont De Nemours & Company  
 Elastic Therapy, Inc.  
 Engelhard Corporation  
 Enichem America  
 Essex Manufacturing Co.  
 Ethyl Corporation  
 Excel International Group  
 The Exylin Company  
 E-Z-Go Textron  
 Fashion Accessories Shippers Association, Inc.  
 Fliscinkim, Inc.  
 Foothills Hosiery, Inc.  
 Formtec, Inc.  
 Fourdrinier Wire Council  
 Fox River Mills, Inc.  
 Franks Hosiery Mills, Inc.  
 Fresh Produce Association of the Americas  
 Futai (USA) Inc.  
 The Gates Corporation  
 Gerry Baby Products  
 Groz-Beckert



Haarman & Reimer Corp.  
 Hampshire Hosiery, Inc.  
 Harris Corporation  
 Harris & Covington Hosiery Mills  
 Hartford Bearing Company  
 Hasbro Inc.  
 Hoechst-Celanese Corporation  
 Hollander, Div. of Stapo Industries  
 Holt Hosiery Mills, Inc.  
 Hope Hosiery Mills  
 Huffly Corporation  
 Hunt-Wilde Corporation  
 ICI Americas Inc.  
 Intel Corporation  
 J & B Hosiery, Inc.  
 Kabi Pharmacia Inc.  
 Kayser-Roth Corp.  
 Kingstate Midwest Corp.  
 Leath, McCarthy & Maynard, Inc.  
 Lemco Mills, Inc.  
 Len-Wayne Knitting Mills, Inc.  
 Lindsay Wire Weaving Company  
 Lonza Inc.  
 Luggage and Leather Goods Manufacturers of America, Inc.  
 Mardell Laboratories  
 Marion Merrell Dow, Inc.  
 Mattel, Inc.  
 Mauney Hosiery, Inc.  
 Mayo Knitting Mill, Inc.  
 Merck & Co., Inc.  
 Miles Inc.  
 Murray Ohio Manufacturing Company  
 National Association of Hosiery Manufacturers  
 National Bulk Vendors Association  
 National Filtration Corporation  
 NIPA Laboratories  
 Nishika Corporation  
 NOR-AM Chemical Company  
 Ohio Rod Products  
 OMNI USA, Inc.  
 The Orr Felt Company  
 Paul Lavitt Mills, Inc.  
 PBI/Gordon  
 PepsiCo, Inc.

Persons-Majestic Manufacturing Co.  
Playhouse Import and Export Inc.  
Polaris Industries L.P.  
Polaroid Corporation  
Polygon Industries Corporation  
Procter & Gamble, Inc.  
Pyramid Handbags  
Roadmaster Corporation  
Rohm & Haas Company  
Romme Hosiery, Inc.  
Royce Hosiery Mills, Inc.  
Russ Berrie & Co., Inc.  
Sate-Lite Manufacturing Company  
Schering Inc.  
Shedran Corporation  
Shimano American Corporation  
Sturmy-Archer Limited  
Sun Metal Products, Inc.  
Sundstrand  
Swisher International, Inc.  
Synthetic Organic Chemical Manufacturers Association  
Tennessee Machine and Hosiery Co.  
The Kendrick Co.  
Totes, Inc.  
Toy Manufacturers of America, Inc.  
Trek Bicycle Corporation  
Unaform Incorporated  
Union Frondenberg USA, Co.  
Uniroyal Chemical Co., Inc.  
USR Optonix  
United States Hosiery Corp.  
Walton Knitting Mills, Inc.  
Wagner Systems Corporation  
Weavexx  
Wippette Inc.  
Xerox Corporation

BEFORE THE  
SUBCOMMITTEE ON TRADE  
WAYS AND MEANS COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

Hearings on the Trade Agreements  
Resulting From the Uruguay Round  
Multilateral Trade Negotiations

Written Statement of  
The Timken Company

The Timken Company ["Timken"] submits these comments on the results of the Uruguay Round to draw attention to several issues of critical importance to the effectiveness of the U.S. antidumping law. Before reviewing the issues, we provide some background on the company and its experience with the antidumping law.

**1. Timken is a competitive leader in the manufacturing industry**

From the time Henry Timken invented the tapered roller bearing in the 1890s, Timken has always remained a world-leader in the production of tapered roller bearings. The performance of Timken® bearings sets the benchmark against which others are measured. Timken also produces its own bearing quality steels. We started steel production in 1915, and today we are the nation's leading supplier of seamless alloy steel tubing and the second largest producer of alloy bars.

Because Timken is a global producer, we are directly affected by the Uruguay Round and are deeply concerned about the continued effectiveness of our trade laws. Timken has had manufacturing operations in England since 1909, in France since 1918 and in Canada since 1922. Timken bearings are also made in South Africa, Australia, Brazil and India. In 1992, 24% of our net sales and 48% of our operating income derived from our non-U.S. operations.

Apart from our global orientation, we are also a technological and quality leader in the manufacturing industry. Our leadership is built on investment, constant innovation and strict quality control. For example, in the 1980s, despite the general difficulties of the steel industry worldwide, we invested \$450 million to build a new state-of-the-art steel-making facility. While the bearing and the steel industries are mature industries, our list of product innovations continues to grow. Recent innovations include our Sensor-Pac "intelligent" bearings and our line of micro-alloy Parapremium steels, offering near vacuum-degas performance at a more economical price. We also developed new steels for Chrysler's highly successful LH cars, and our bearings are found in German high-speed trains, as well as in high-tech U.S. helicopters. Our company was the first to achieve the ISO9001 quality standard for its entire European manufacturing operation at the same time on the first attempt. And in 1992, Industry Week picked one of our plants as one of the 10 best manufacturing plants in America.

**2. Timken has relied on the unfair trade laws to attempt to obtain a "level playing field", with only partial success to date**

Notwithstanding its global orientation and its technological leadership, Timken's U.S. operations have suffered greatly from the impact of unfair competition. Principally, Timken has faced unfair competition from Japan since the 1960s. In the U.S. market (and in other markets around the world), Japanese bearing producers first began offering high-volume commodity-type bearings. Japanese bearings penetrated and eventually captured the markets for conveyor belt applications, mobile homes, and trailers -- applications where the performance of the bearing was not critical and the customers selected suppliers solely on the basis of price.

From that platform, the Japanese producers qualified with our highest-volume customers, such as automotive companies. They targeted a handful of high-volume part numbers and offered their bearings at the lowest prices in order to capture those accounts. Indeed, their sales personnel offered bearings at 15% below Timken's prices, no matter



what price we quoted. As a result, our sales, production, and profitability were severely impacted.

To address the obvious price discrimination by the Japanese producers, Timken first filed for relief under the antidumping laws in the 1970s. As administered by the Treasury Department, however, relief was never afforded. Japanese producers never paid antidumping duties, but were allowed, first by Treasury and then by Commerce, to enter their merchandise under bond. To this date, because of lengthy administrative and judicial appeals, there are customs entries dating from 1974 on which no antidumping duties have been paid, despite repeated findings of dumping.

Later, to address the shortcomings of the first antidumping order and to expand the scope of the relief to address new sources of unfair import competition, the Timken Company again petitioned under the antidumping law in 1986. By this point, however, Japanese imports had captured a substantial market share at key, high-volume accounts. Imports from East Europe and China had replaced Japan in the applications where Japanese producers first penetrated the market. Faced with dumping from numerous sources, Timken's performance had further eroded.

The antidumping orders we obtained have proven to be of some assistance to The Timken Company. The margins of dumping found against the main exporters from Japan have been relatively high for all periods investigated by Commerce, generally ranging from lows of around 3% to highs of around 40%, depending on the company and the period. After antidumping duty orders were put in place, our sales increased somewhat and we were able to bring back some employees that had been laid off.

The antidumping orders, however, have not achieved their full intended beneficial effect for a variety of reasons: bureaucratic delays, evasion and circumvention of the law by our foreign competitors, premature liquidation of entries subject to the dumping orders without collection of duties, interpretations of U.S. law by the administering authority which have resulted in our major Japanese competitors being able to (1) absorb the dumping duties paid without passing them on to customers, (2) pay duties owed without interest (essentially permitting payment of duties for pennies on each dollar that should be due), and (3) receive dumping margins below the actual level of dumping because of the biases in existing interpretations of U.S. law which reduce dumping duties where importers are related to foreign producers. While in recent years the administering authority and Customs have attempted to improve enforcement, many problems continue to exist which reduce the value of the orders to our company and which frustrate the remedial intent of the law.

### **3. The Uruguay Round Final Act Antidumping Agreement Doesn't Need to Weaken U.S. law**

In terms of the U.S. antidumping and countervailing duty laws, the Uruguay Round will require certain changes to U.S. law which (standing alone) will make cases harder to bring, more expensive to participate in, provide reduced margins and potentially be in place for shorter periods of time. Domestic producers like The Timken Company have been repeatedly promised "a level playing field" where injurious dumping is demonstrated. It is critical that Congress take the opportunity of the Uruguay Round implementing legislation to provide the level playing field, to see that affirmative provisions of the Uruguay Round antidumping text are included in U.S. law even where not required, to eliminate the incentives for evasion/circumvention, to eliminate or reduce the disincentives to reinvestment that periodic new injury tests where dumping continues will provide and otherwise make these laws effective. Stated differently, the United States should make U.S. laws as strong as the GATT agreement permits.

### **4. The U.S. should make sure that it maximizes the advantages obtained in the agreement**

Our negotiators worked hard to minimize the negative aspects of the antidumping agreement. Thus, for example, while accepting the need to do a "sunset" review every five years even where dumping continues, they ensured that all outstanding findings, orders and suspension agreements can be treated (for the sunset review process) as coming into effect when the World Trade Organization commences (July 1, 1995 or earlier). Similarly, "averaging" on export prices is the rule under the agreement only for investigations (not for reviews) and is subject to specific exceptions; de minimis and

negligibility concepts appear to be required only for investigations. The U.S. should see that domestic producer rights are safeguarded where not specifically required to be modified. Hence, implementing legislation should have all existing orders, findings and suspension agreements viewed as effective for "sunset" reviews from the effective date of the World Trade Organization, and industries should be given the full period permitted under Article 11 before reviews are required. Similarly, items required only in investigations should be limited to investigations and the exceptions reasonably defined within investigations for issues like averaging.

#### a. Sunset reviews

Timken would note that United States law and regulations presently provide for the revocation of antidumping duty orders or findings under certain circumstances: (a) cessation of dumping and (b) changed circumstances. Foreign producers have the burden of persuasion under existing law where changed circumstances are claimed (unless the issue is lack of ongoing interest by the domestic industry). Since much of the information relevant to the inquiry is in the possession of the foreign producers and since dumping has not ceased, current U.S. law reasonably allocates burden. Absent the circumstances described above, U.S. law requires an order to continue in place.

The Uruguay Round text will make some significant changes to existing U.S. law and practice. First, the UR text will require that antidumping orders, findings or suspension agreements be revoked or terminated within five years of entry (or last sunset review) unless a review is conducted and a determination made that "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." Consistent with existing U.S. law, as long as reviews are commenced within five years, the order can remain in effect (and entries hence subject to duties) pending the outcome of such a review. In addition, a normative time frame is provided ("Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation"), which while consistent with U.S. law and regulations will require greater consistency of performance by the Department of Commerce.

Industries that have been injured by dumping and who face continuing dumping obviously are not desirous of incurring significant expense in demonstrating again the likelihood of continuing or recurring injury if the order were removed. The Administration and Congress should make certain that sunset reviews are not unnecessarily complicated, do not require unnecessary information or involve unnecessary expense for domestic producers.

Similarly, because so many of the outstanding findings, orders and suspension agreements involve in whole or in part exporter's sales price situations, continuing dumping is generally reflective of continuing price depression or suppression in the marketplace. Stated differently, where related party importers are involved in cases and dumping continues, part or all of the intended relief under the law is denied to the domestic industry. In these situations in particular, it is critical that the full five years of relief after implementing legislation becomes effective be given so that the industries are provided effective relief before facing additional costs associated with a new injury investigation.

#### b. Timken's experience

Repeatedly, Timken has been assured by our government that we have a right to a level playing field in international trade, that the U.S. trade laws are designed to achieve this goal, and that we should pursue our remedies under the antidumping law to the fullest to obtain that benefit. That is the course we have followed.

Yet, although we obtained antidumping duty orders on our products, dumping continued that was not corrected by the imposition of duties because importers are related to foreign producers and have simply chosen to "eat" the duties -- a practice that would be actionable if the importers were unrelated and were provided coverage on duties by foreign producers. Below are two tables of margins found by Commerce in various reviews of the antidumping orders on tapered roller bearings exported from Japan. *As shown, dumping margins have remained high, indicating that price depression and suppression has continued, in spite of the antidumping orders.*

**Tapered Roller Bearings From Japan Under Four Inches In Diameter**  
(percent dumping margin)

<u>Period</u>	<u>Koyo</u>	<u>NSK</u>
1974-76	36	16
1976-78	27	16
1977-78	23	23 (4/78-7/78: 40)
1978-79	18	20
1979-80	pending	10
1979-86	pending	pending
1986-87	38	15
1987-88	48	18
1988-89	16	6
1989-90	16	3
1990-91	21	20
1991-92	34	13

**Tapered Roller Bearings From Japan**  
**Over Four Inches in Diameter and parts (finished or unfinished)**  
(percent dumping margin)

<u>Period</u>	<u>Koyo</u>	<u>NTN (all product)</u>
1986	36	37
1987-88	35	10 (purchase price)
1988-89	25	39 (purchase price)
1989-90	23	22 (purchase price)
1990-91	15	14
1991-92	20	14

This continued dumping has had a severe impact on our industry. In the table below, we show key data on the profitability of the Timken Company. While the data reflect the experience of the company as a whole (domestic and international, bearings and non-bearings), the overall picture that is apparent is the continued depressing effect massive ongoing dumping and evasion of our orders has had on our company. In 1982, the Commerce Department revoked (Timken believes erroneously) the original order with regard to NTN, a major Japanese bearing company. A new order covering all of NTN's products was not in place until late 1987. In recent years, a very large portion of product imported by Koyo, a second major Japanese producer, has come in as unfinished parts which were not being caught by Customs or Commerce and subjected to duties until recent months. While profits rebounded in the late 1980's (3.25 - 4.24%), evasion by foreign producers through a variety of apparent loopholes (e.g., use of resellers, claims of "roller chain" exemption, bonded warehouse or FTZs, parts not identified as covered by one of the orders) contributed to the decline in profitability in the early 1990s (-0.95% in 1991-92).

**Profitability of The Timken Company 1975-1992**  
(Thousand of dollars, except per share data)

<u>Year</u>	<u>Net Income</u> <u>(Loss)</u>	<u>Sales</u>	<u>Net Income(Loss)</u> <u>as % of Sales</u>
1975	\$61,323	\$804,491	7.62%
1976	\$60,888	\$884,427	6.88%
1977	\$74,441	\$974,352	7.64%
1978	\$88,639	\$1,105,818	8.02%
1979	\$102,131	\$1,282,069	7.97%
1980	\$92,632	\$1,338,499	6.92%
1981	\$101,115	\$1,427,158	7.09%
1982	\$(3,001)	\$1,014,361	(.30%)
1983	\$530	\$937,320	0.06%
1984	\$46,057	\$1,149,908	4.01%
1985	\$(3,903)	\$1,090,674	(0.36%)
1986	\$2,736	\$1,058,055	0.26%
1987	\$10,319	\$1,230,258	0.84%
1988	\$65,912	\$1,554,143	4.24%
1989	\$55,345	\$1,532,962	3.61%
1990	\$55,242	\$1,701,011	3.25%
1991	\$(35,687)*	\$1,647,425	(2.17%)
1992	\$4,452	\$1,642,310	0.27%

Sources: The Timken Company, Annual Reports, 1976-1992.

* Losses includes a provision for restructuring of \$41 million.



5. Congress should ensure that antidumping relief is effective by treating dumping duties as a cost, by compensating U.S. producers and by eliminating loopholes and incentives to circumvent or evade existing orders

- a. Antidumping duties should have a direct effect on the price

The primary purpose of U.S. antidumping law is to eliminate the price discrimination, either by encouraging foreign producers and importers to charge and pay a fair value or by forcing the importer to pay the differential in addition to the price of the merchandise. This primary purpose is generally achieved where importers are unrelated to foreign producers. If foreign producers attempt to beat the system by assuming the cost of the antidumping duties, such assumption of cost is treated as an additional deduction for purposes of determining the liability of the importer. As a result, domestic producers generally experience an immediate market reaction where importers are unrelated parties.

However, such is not the case where the importer is related (whether purchase price or exporter's sales price is used). In Timken's case, even with cash deposits of 20-40% for many years, Timken has seen little if any price movements at important accounts, as the foreign producer and related party importer combine to absorb the antidumping duty rather than charge a fair price to unrelated purchasers. This situation has dramatically undermined the remedial effect of the order for the domestic industry. Timken and other companies have argued that existing U.S. law does not require such an absurd result, that the assumption of the cost of the duties should be deducted just as it would be in purchase price situations. Such arguments have to date been to no avail. However, Article 9.3.3 of the Antidumping agreement would specifically authorize treating antidumping duties as additional deductions where related party importers fail to pass the duties through to unrelated purchasers. This is a potentially critical issue if Congress is to make the antidumping law effective where related party importers are involved. Article 9.3.3 also permits the United States to deal with problems (common in the trigger price mechanism and other U.S. programs) of companies manipulating prices for multiple products to create the appearance of elimination of dumping (raising prices on selected items and lowering prices on other items, including items not covered by the order). The U.S. should consider requiring at least a certification by the related party importer of no manipulation and subject such claims to verification.

- b. Congress should eliminate incentives to evade the orders

Because a large portion of tapered roller bearings are used in automotive and other applications where the value is a small part of the total value of the end product, Timken remains deeply concerned about unnecessary loopholes in U.S. law and administrative practice. The GATT antidumping code and the Uruguay Round Final Act antidumping agreement permit countries to cover all product from a country covered by an order even where further manufacturing takes place. See Antidumping Code Art. 2:5; Uruguay Round Final Act Antidumping text Art. 2:3. The authorities are given very broad latitude in determining a methodology to use in determining what, if any, liability exists ["if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine"]. U.S. law and practice, however, permit product potentially subject to an antidumping order to be excluded from an order where it is imported by a related party and incorporated in a final product where it accounts for less than 1% of the final product's value. Many auto parts or parts for construction or agricultural equipment fit the small value exception, rendering gamesmanship particularly rampant where orders for such parts are extant. While relatively few Japanese bearing companies are related to auto or other companies within the meaning of U.S. law, a provision in U.S. law permitting "resellers" to be the basis for determining foreign market price and applicability of the related party exception has encouraged lawyers representing foreign interests to promote at seminars around the country the change in how goods are ordered by multinational companies to permit both manipulation of the benchmark foreign market value and to potentially invoke the exception to coverage of an order entirely regardless of the magnitude of the dumping in fact taking place. Such gamesmanship can gut antidumping orders by simple order entry change procedures -- a result that cannot be intended by Congress. Congress should modify U.S. law (a) to drastically reduce the opportunity to use the "reseller" provision and (b) to see that all merchandise of the class or kind covered by an order is subject to the order regardless of the amount of value added in the United States (there are a variety of

options available, including use of transfer prices, average arms-length prices to comparably situated companies, etc.).

Similarly, foreign trade zones and bonded warehouses continue to pose opportunities for foreign bearing companies to evade, avoid or delay antidumping liability for product that should be covered by outstanding orders. While Commerce through regulations has at least stopped the rampant problem of FTZ imports escaping entirely the reach of antidumping orders where incorporated into other products, the problem continues to exist for product exported since antidumping duties are not required to be deposited prior to entry into the zone. Moreover, entries into bonded warehouses, including situations where further manufacture takes place, presently escape entirely the reach of U.S. law. Congress should change existing law to provide that merchandise subject to an antidumping or countervailing duty order cannot enter into a bonded warehouse, free trade zone or other "duty free" environment without the payment of the existing cash deposit rate and that such deposits shall not be rebated upon exportation.

Finally, Congress should address the current structure of liability for dumping duties which encourages importers or foreign producers to find HTS numbers, customs rulings or other devices to escape initial notice (and hence any liability) or which permits human error by Customs in terms of premature liquidation to void any potential liability. In some cases, hundreds of formal requests are filed with customs for rulings to move products arguably covered by orders into HTS categories not listed in antidumping duty order notices. Domestic producers generally have little notice of these requests until they are decided and may or may not be able to even identify the requests that are efforts at evasion or avoidance. Moreover, the formal requests are undoubtedly only the tip of the iceberg of informal inquiries or opinions of counsel which move products into categories not subject to suspension of liquidation. Liquidation is the magic word. If an importer can manage to get an entry liquidated, the game is over. Domestic producers are seriously prejudiced as has been shown repeatedly in the tapered roller bearing cases. Some respondents in reviews have publicly indicated partial or total liquidations of entries covered by the review period or asserted that entries are outside the scope of the antidumping orders. Such an outcome is an outrage and makes a mockery of domestic industry rights. Congress should require that liability stays with the importer or that entries discovered to have been erroneously liquidated (or in fact subject to the antidumping duty order) may be reliquidated within a reasonable period of discovery and notice of their liquidation.

c. Compensation of Domestic Industry for Injury Caused by Unfairly Traded Imports

In recent years there have been repeated efforts by industries and by Congress to develop a private right of action against companies engaged in dumping practices. Such efforts have generally failed because of the perceived GATT-inconsistency of a private right for conduct covered by GATT Article VI (antidumping and countervailing duties). The driving force behind such efforts, however, remains in place -- the failure of the existing system as administered to in fact provide a level playing field when orders are put in place.

The problem takes several forms including: (1) relief is generally made available only after injury sufficient to close factories, force layoffs of significant numbers of employees, the reduction of R&D and capital expenditures; (2) relief is often illusory as related party importers continue to dump and simply "eat" the duties, generally with the direct or indirect assistance of their foreign parents; and (3) relief is illusory as foreign producers and their importers have large incentives to evade the orders and there are no penalties where such efforts involve product that in fact should be covered by the order.

The latter two issues have been addressed previously. The first can be addressed by several means. First, neither the GATT nor U.S. law require industries to be so injured before relief is available. The International Trade Commission should be encouraged to review their current interpretations to see that relief is in fact made available earlier. Such an approach will be particularly important with the five-year injury review if the antidumping law is not to create (unintentionally) a disincentive to reinvestment.

Second, petitioners and those in support of the petition should receive all duties finally collected by Customs under the orders. Such funds would (a) provide a powerful disincentive to foreign producers to continue to dump (as all such dumping duties would

flow to the domestic producers), (b) offset to some extent (in most cases only a minor extent) the continuing price depression/price suppression experienced where related party importers are involved, (c) reduce the disincentive to domestic producers to reinvest where dumping continues and (d) reduce the disincentive to file meritorious cases that the new agreement will create (many provisions make cases harder to file, harder to win, provide less relief for shorter periods).

GATT Article VI does not prohibit the payment of dumping duties collected to the petitioner and those in support of the petition. While some may argue that such funds are a form of subsidy, even assuming *arguendo* potential actionability (not clear under Article 2 of the Uruguay Round Final Act Subsidy Agreement), such payments would not be prohibited.

Based on the first annual report from the Customs Service and the Department of Commerce (covering fiscal year 1992), potential duties paid to domestic industries would be about \$351 million/year (using fiscal year 1992 as typical). While not a significant amount of money to the Federal Government, such amounts would be important to the domestic producers facing continuing dumping.

6. Congress should further enhance the antidumping law by removing biases existing under existing law -- Deduction of Reasonable Profits on Resale, Elimination of the so-called "ESP offset"

Japanese tapered roller bearing producers typically import their products through wholly owned or related subsidiaries in the United States. In such cases, the statute requires Commerce to use the price charged by the related party importer on its resale to the first unrelated purchaser and to construct an export price. This statutory requirement is reflected in the laws and practices of our major trading partners and in the GATT itself:

"In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer. . . In [such cases], allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made."

GATT Antidumping Code (1979), Art. 2:5 and 2:6 (bracketed material added).

U.S. law does not specifically use the word "profits" in describing deductions to be made from the resale price, using only the term "commission". While existing U.S. law is essentially identical to the Antidumping Act, 1921 language on exporter's sales price and while U.S. Customs practice and court decisions would support a position that "commission" includes profits for purpose of the ESP deductions, Commerce and Treasury before it have chosen not to deduct a reasonable profit on resale. Counsel representing foreign producers have admitted in submissions to Commerce and in law review articles that Commerce practice makes related party situations generally more advantageous.

Similarly, despite the specific statutory requirement to deduct expenses between importation and sale to the first unrelated party, the administering authority has adopted a regulation which negates the statutory deduction by making an adjustment to foreign market value not for any difference but as "an offset". Such an offset is not required by the GATT Antidumping Code and is not offered by any of our trading partners.

The result of the peculiar practices of the United States administering authority in related party situations is:

(a) the failure to construct an export price, instead creating an "export price plus" (the plus being the inclusion of a reasonable profit on resale); and

(b) the failure to determine a comparable foreign market value, instead creating a "foreign market value minus" (the minus being the deduction of the so-called ESP offset).

Congress has considered on several occasions correcting the existing agency practice which has the bizarre consequence of having U.S. companies face a calculus abroad that

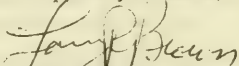


foreign producers do not face in the U.S., which explains away significant dumping margins and which even counsel for respondents acknowledge provides related party importers advantages in the calculus simply because of the relationship. In 1988, Commerce asked Congress to hold off consideration of the pending proposals to permit it to change the GATT and our trading partners. The same provisions are contained in the Uruguay Round Final Act Antidumping agreement. Congress should now take action to conform U.S. law with our GATT rights by mandating a deduction from the resale price to the first unrelated party of a reasonable profit and prohibiting the ESP offset.

+ + + + +

For many global companies, like Timken, and for many domestic-only companies, maintenance of trade laws that are usable, affordable and that provide effective relief is a top priority as the Uruguay Round implementing legislation moves forward. While there are many issues in the Final Act Antidumping agreement that will, standing alone, make relief more difficult to obtain, more expensive and potentially available for shorter periods where dumping continues, the United States Government need not accept a weakening of U.S. law. There are positive elements of the agreement that the U.S. should adopt into its law and practice that would help reduce price depression when dumping orders are issued (Art. 9.3.3) or that would generate dumping margins not biased by the presence of a related party importer. There are issues (e.g., compensation) which while not specifically authorized are not prohibited that could reduce the disincentives of other changes that will need to be made. Finally, Congress and the Administration have the ability to implement changes in ways that minimize harm to domestic users of the laws. Sunset review requirements are an obvious example.

Respectfully submitted,



Larry R. Brown, Esq.  
Vice President & General Counsel  
The Timken Company

**STATEMENT OF DAVID A. MILLER, PRESIDENT  
TOY MANUFACTURERS OF AMERICA, INC.,  
ON THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS  
BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS & MEANS**

February 22, 1994

The Toy Manufacturers of America, Inc. (TMA), an association representing more than 250 U.S. manufacturers and importers of toys, dolls, and games, and which accounts for 85 percent of the toys sold in the United States, applauds the Clinton Administration on its excellent work in successfully concluding the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT). We have viewed the Uruguay Round, from its inception in 1985, as an historic opportunity to lower and eliminate trade barriers worldwide, particularly tariffs that effectively limit access to markets and unnecessarily impose additional costs upon consumers. The reduction of tariffs can only enhance U.S. competitiveness and ensure the continued strength of the U.S. toy industry.

The toy industries of Canada and Japan have agreed to join the U.S. toy industry in pressing for immediate zero tariff reductions on all products, with very few exceptions. We continue to support speedy tariff reductions and would prefer that tariff reductions on toys be accelerated to zero immediately by all nations, rather than be staged over five or ten years.

**The U.S. Toy Industry**

U.S. companies lead in the manufacturing and marketing of toy products in almost every developed country in the world. The highly competitive nature of the business and the desire to sell toys at an affordable price have caused many American toy companies to turn to offshore sources of supply in developing countries. In the 1950's, the industry was one of the first to source product from Japan. Later, when Japan's growing economy made production there too expensive, toy companies shifted production to Hong Kong, Korea and Taiwan. As those nations' economies developed, China became the primary source of toy production. Many toys are also produced in such developing nations as Malaysia, Indonesia, Thailand and Mexico, which traditionally have qualified for the Generalized System of Preferences (GSP) program. Toys produced in each of these countries by U.S. companies are sold around the world.

Nearly two-thirds of our membership is involved in export-import trade worldwide; about 60 to 70 percent of all toy inventions, designs, engineering, and marketing programs are the result of know-how emanating from United States and TMA member employees. While low-skilled toy production employment in the U.S. has declined since the 1950's, employment in product development, design, quality control, production engineering, marketing and advertising has increased. Today, the toy industry's U.S. employees are medium and high-wage earners. More than 31,000 jobs in, and related to, the toy industry in the U.S. depend upon free and open trade. International production and marketing is therefore a matter of maintaining and expanding the number of high value-added and desirable jobs in the United States.

### The Opportunity Presented by the Uruguay Round

The Uruguay Round market access agreement has presented an important opportunity for the U.S. to convince its trading partners to open their markets to our goods. Recognizing this, and the extreme importance of a free and open global market for toys, we have been an active member of the Zero Tariff Coalition since its inception in 1991. The Zero Tariff Coalition, which represents a broad cross-section of U.S. industries, strongly advocates the reciprocal elimination of all tariffs across broad product sectors, including the toy sector.

We welcomed the Clinton Administration's commitment to a "zero for zero" proposal as part of its Uruguay Round market access offer, which included the toy sector (Chapter 95 of the Harmonized Tariff Schedule). We were encouraged when other major industrialized countries including Canada, Japan and Europe initially indicated their support as well. The U.S. toy industry has long believed the elimination of all tariffs on Chapter 95 products will significantly benefit not only the U.S., but also many Asian and Latin American countries producing substantial quantities of toys. Those nations, more and more, are becoming important consumer markets for toys as the wealth and disposable incomes of their populations improve.

### Preventing Backsliding on Recent Gains

For these reasons, we continue to urge the Clinton Administration and the Congress not to permit America's trading partners to back away from the progress that we thought had been achieved on zero tariffs on toys at the conclusion of the Uruguay Round trade talks on December 15, 1993. At that time, agreement was reached on historic reductions in tariffs on toys, games and dolls in Harmonized Tariff Schedule (HTS) headings 9501-9505.

We are disappointed by the EU's decision to exclude products principally supplied by China from the general commitment to reduce tariffs on imported toys to zero. We are also deeply concerned about recent quotas imposed by the EU on certain categories of Chinese toys. We believe these actions run counter to the spirit of the Uruguay Round and, in our opinion, undermine the fabric of the entire GATT agreement reached in Geneva.

All parties agreed to reductions to zero tariffs on all products, with very few exceptions. We continue to support these tariff reductions and would prefer that tariff reductions on toys be accelerated to zero by all nations immediately rather than over five or ten years.

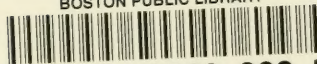
### Conclusion

We believe immediate zero tariff reductions on toys will ensure the continued competitiveness of the U.S. toy industry and will reduce consumer costs. Reducing all nations' tariffs to zero on Chapter 95 products (toys, dolls, games and Christmas decorations) immediately, will benefit the world economy as well as U.S. consumers. The toy industry strongly urges the Administration and the Congress to recognize these goals and to continue to work for immediate zero tariffs on toys as the critical market access negotiations now underway are concluded over the next few weeks.





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